SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1978

No. [redacted] 78

THE GEORGETOWN NATIONAL BANK, PLAINTIFF IN ERROR,

v.

[redacted] MORELAND, SHERIFF OF SCOTT COUNTY, [redacted] THE SPECIAL COURT OF SCOTT [redacted] COUNTY, ETC., ET AL.

TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY

FILED APRIL 12, 1979

[redacted]

(31,067)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1925

No. 377

THE GEORGETOWN NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

OLLIE McFARLAND, SHERIFF OF SCOTT COUNTY, KENTUCKY; THE FISCAL COURT OF SCOTT COUNTY, KENTUCKY, ETC., ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY

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[fols. 1 & 2] [Captions omitted]

[fol. 3] **IN CIRCUIT COURT OF SCOTT COUNTY**

THE GEORGETOWN NATIONAL BANK, Plaintiff,

vs.

OLLIE MCFARLAND, Sheriff of Scott County, Kentucky; Fiscal Court of Scott County, Kentucky, Composed of J. B. Ward, County Judge; Clayton Thomason, County Commissioner; T. K Shuff, County Commissioner; L. F. Aulick, County Commissioner, Defendants.

PETITION

Comes the plaintiff, Georgetown National Bank of Georgetown, Kentucky, and for a cause of action herein says:

That it is a national banking association created, organized and existing under the laws of the United States, commonly called the National Bank act, and the several acts amendatory thereof, and as such is engaged in a general banking business in Georgetown, Scott County, Kentucky, and under its charter has power to contract and be contracted with, sue and be sued, loan money at interest, buy and sell bonds, notes and other demands against individuals and corporations, and thereby earn a profit in its business in the same way and manner as may be done by natural persons.

That the defendant, Ollie McFarland is now, and was at the time of the acts hereinafter set out, the duly elected, qualified and acting Sheriff of Scott County, Kentucky, and that by virtue of his office as such Sheriff, he is the duly authorized collector of all state and county taxes for the county of Scott and State of Kentucky.

[fol. 4] That J. B. Ward, Clayton Thomason, T. K. Shuff and L. F. Aulick, are now and were at the time of the acts hereinafter set out, the duly elected, qualified and acting members, composing the Fiscal Court of Scott County, Kentucky.

That Section 5219 of the United States Revised Statutes, is as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located, but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking association located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individuals citizens of such State, and that the shares of any national banking association owned by nonresidents of any State shall be taxed in the City or town where the bank is located, and not elsewhere.

Nothing herein shall be construed to exempt the real property of associations from either State, County or Municipal taxes, to the same extent, according to its value, as other real property is taxed."

That by Section 4019-A-10 of the Kentucky Statutes, being an Act of 1917 of the Kentucky Legislature, it is provided that the shares of capital stock of all banks located and doing business in Kentucky, shall be subjected to taxation for state purposes, and in addition shall also be subject to taxation for local purposes, that is by city, county and taxing districts in which said banks are located. The [fol. 5] same Statute however, exempts every other person and corporation, other than banks, from paying any tax whatever to any city, county or taxing district in Kentucky, on money in hand, notes bonds, accounts and other credits, whether secured by pledge, mortgage or otherwise, or unsecured, altho such persons and corporation reside in and do business in and own property in such city, county or taxing district. Section 4019-A-10 is in part as follows:

"All property subject to taxation for State purposes as provided in Section 4020, Kentucky Statutes, shall be subject also to taxation in the county, city, school or other taxing district in which same has a taxable situs, except the following classes of property, which shall be subject to taxation for state purposes only:—

(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operation.

(2) Machinery and products in course of manufacture of persons, firms or corporations actually engaged in manufacturing and their raw material actually on hand at their plants for the purpose of manufacture.

(3) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured.

Shares of stock not relieved from assessment under Section 4088 of this act, provided, however, that nothing in this section shall forbid local taxation of franchise of corporations or of the shares of banks, trust companies or combined banks and trust companies, doing business in Kentucky, or domestic life insurance companies."

Said section then provides for a method of assessing such bank shares [fol. 6] for local taxation, that is for taxation for county, city and district purposes.

That by section 4019 of the Kentucky Statutes, the tax rate on all property, including plaintiff's bank shares, is fixed at forty cents per one hundred dollars of the assessed valuation for state purposes, and that said rate was in full force and effect at the time hereinafter set out, namely for the taxing years of 1919-1920-1921 and 1922.

That the county tax rate in Scott County, as fixed by order of the Fiscal Court of said county, duly passed and entered, was seventy cents per one hundred dollars of the assessed valuation for the taxing year 1919, seventy cents per one hundred dollars of the assessed

valuation for the taxing year 1920, and sixty-five cents per one hundred dollars of the assessed valuation for the taxing year 1921, and sixty-five cents per one hundred dollars of the assessed valuation for the taxing year of 1922.

That by said Act Plaintiff's bank shares were thus made subject to a total tax, state and county of one dollar and ten cents per one hundred dollars for the taxing year 1919; and one dollar and ten cents for the taxing year 1920; one dollar and five cents for the taxing year 1921, and one dollar and five cents for the taxing year 1922, whereas for the same periods, money in hand, notes, bonds, accounts and other credits, being moneyed capital in the hands of individuals citizens, residing in said state and county, and being property of the same class as plaintiff's bank shares, were subject to a tax under said Act of only forty cents per one hundred dollars of the assessed valuation.

[fol. 7] That by said Act, each bank is made an agent for its share holders in assessing for taxation the shares of stock owned by such shareholders in said bank, and is made responsible for the payment of the taxes on such shares.

That all of said acts and constitutional provisions above quoted, were in full force and effect at the time of the matters hereinafter set out, and are now in full force and effect.

The plaintiff's said stock is divided into seven hundred and fifty shares of one hundred dollars each, and was assessed for taxation for the taxing year 1919, at $138,550,00; for 1920 at $134,509.00; for 1921 at $147,575.00; and for 1922 at $144,771.00.

That the Clerk of Scott County, Kentucky, whose duty it is under the laws of the State of Kentucky, to make out the tax bills for state and county taxes, for said county and state, correctly omitted to figure any county tax on the assessed valuation of plaintiff's bank shares in making out the tax bills for the years 1919-1920 and 1921.

That in making out the tax bills for said years, he only figured a state tax of forty cents per one hundred dollars on plaintiff's real estate and bank shares, and a county tax on plaintiff's real estate.

That said tax bills so made out, were presented to plaintiff by the Sheriff of Scott County, for payment in each of said years, and were promptly paid by plaintiff, and it holds receipts therefor.

That said Clerk in the year 1922, acting pursuant to said act above mentioned, namely section 4019-A-10 of the Kentucky Statutes, has [fol. 8] wrongfully and illegally made out what are denominated corrected "taxbills," for said years in which he has wrongfully and illegally figured county taxes against plaintiff's bank shares as follows:—

For the taxing year 1919, a tax at the rate of seventy cents per one hundred dollars of the assessed valuation ($138,550.00); for the taxing year 1920, at the rate of seventy cents per one hundred dollars on the assesssed valuation ($134,509.00); for the taxing year 1921 at the rate of sixty-five cents per one hundred dollars of the assessed valuation of ($147,505.00); a total tax for the three

years of ($2,870.65). That said Clerk for the year 1922, in figuring the tax bills against this plaintiff for said year, has wrongfully and illegally figured a county tax on plaintiff's said bank shares at the rate of sixty-five cents per one hundred dollars of the assessed valuation on the assessed valuation of ($144,771.00) amounting to ($941.01), for the taxing year 1922.

That said Clerk has certified all of said tax bills (so called corrected tax bills), for 1919-1920 and 1921, and the tax bill for 1922 to the Sheriff of Scott County, for collection, and the Sheriff has notified this plaintiff that he holds same for collection, and that he will proceed to levy on the property of this plaintiff for the collection of same unless same are paid.

That this plaintiff has paid all other taxes, both state and county for said taxing years 1919-1920-1921 and 1922, except the taxes wrongfully and illegally made out and attempted to be collected against its bank shares for said years, as set out above.

[fol. 9] That there were residing and doing business within the territorial limits of said county of Scott, State of Kentucky, on July 1st, 1918, that being the date on which is assessed for taxes for the taxing year 1919, at least two hundred and fifty individuals citizens of said state and county, each of whom was the owner and holder on said date, of various unsecured promissory notes, which were of reasonable value in the aggregate of the sum of ($300,000.00), and of various promissory notes secured by mortgage on real estate, which were of the reasonable value in the aggregate of ($600,000.00), and of various notes secured by pledges or mortgage on personal property, which were of the reasonable value in the aggregate of ($200,000.00), and of various bonds and securities for the payment of money not otherwise tax free, which were of the reasonable value in the aggregate of ($200,000.00), and of various bonds and securities for the payment of money not otherwise tax free, which were of the reasonable value in the aggregate of ($200,000.00), and that all of said notes, bonds and securities so owned and held on the assessing date for the year 1919, by such individuals citizens of said county, amounted in value in the aggregate to the sum of ($1,300,000.00).

That the total of unsecured promissory notes so owned and held by individuals citizens of said county and state on July 1st, 1919, that being the assessing date for taxes due and payable in the year 1920, was of the reasonable value of ($350,000.00); of promissory notes secured by mortgage on real estate, ($650,000.00); of promissory notes secured by mortgage or pledge of personal property, ($200,000.00); of bonds and securities for the payment of money not otherwise tax free, ($200,000.00); a total of all such notes, bonds, securities, etc., on the assessing date for the year 1920, of the value of ($1,400,000.00).

[fol. 10] That the total of unsecured promissory notes so owned and held by individuals citizens of said county and state on July 1st, 1920, the assessing date for the year 1921, was of the reasonable value of ($500,000.00); of promissory notes secured by mortgage

on real estate, ($1,000,000.00); of promissory notes secured by mortgage or pledge of personal property, ($250,000.00); of bonds and securities for the payment of money not otherwise tax free ($200,000.00) a total of all such notes, bonds and securities on the assessing date for the year 1921 of ($2,100,000.00), that the total of unsecured promissory notes so owned and held by individuals citizens of said county and state on July 1st, 1921 the assessing date for the year 1922, was of the reasonable value of ($400,000.00); of promissory notes secured by mortgage on real estate ($800,000.00) of promissory notes secured by mortgage or pledge of personal property, ($200,000.00) of bonds and securities for the payment of money not otherwise tax free, ($200,000.00), a total of all such notes, bonds, securities etc., on the assessing date for the year 1922, of ($1,600,000.00).

That all of said promissory notes, bonds and securities so owned and held by such individuals citizens of said county and state, on the assessing date on which taxes are assessed for each of said year- 1919-1920-1921 and 1922, were on the same terms, were in the same form, and were in every respect such notes, bonds and securities as are handled by plaintiff bank in the conduct of its banking business.

That all of such property, so enumerated above, is of the same [fol. 11] class of property as the bank shares of plaintiff, that all of said property came and comes into active and direct competition with the banks of said county of Scott, State of Kentucky, and particularly with plaintiff bank in carrying on its business, and loaning its loanable funds, and in buying, owning, selling and disposing of notes, bonds and other securities for the payment of money, and in making a profit by the use of its capital, surplus and undivided profits in such manner.

That said competition is relatively and actually material in amount, and that each and every item of said property so enumerated above, constituted moneyed capital in the hands of individuals citizens of said county, and was and is of the same class and kind of property as plaintiff's bank shares.

That all of said property, so enumerated above, in the hands of individuals citizens for each of the taxing years above named, 1919-1920-1921 and 1922, was then and is now by the laws of Kentucky, as above set out, put into a class of property that is by said law subjected to an annual tax for state purposes, at the rate of forty cents on the one hundred dollars of assessed valuation at the valuation as above given, and was then and is now by said law expressly relieved of all county, municipal, district and local taxes, and by said laws the only tax collectable on any of said property during any of said years, is the state tax at the rate of forty cents per one hundred dollars of the assessed valuation, whereas as heretofore stated, the tax now sought to be collected on plaintiff's bank shares for said [fol. 12] years, is at the rate of one dollar and ten cents for the taxing year of 1919; one dollar and ten cents for the taxing year of 1920; one dollar and five cents for the taxing year of 1921, and one dollar and five cents for the taxing year of 1922.

That plaintiff's said stock is divided into seven hundred and fifty shares of the par value of one hundred dollars each, and that such shares were assessed on July 1st, 1918, that being the taxing date for taxes due and payable in 1919, at ($138,550.00); on July 1st, 1919 for 1920, at ($134,509.00); on July 1st, 1920, for 1921, at ($147,575.00); on July 1st, 1921, for 1922, at ($144,771.00).

That there are in Scott County, Kentucky, five banks, two national banks and three state banks, that the total valuation of the shares of the National Banks in Scott County, Kentucky, as assessed for taxation for 1919, was ($225,082.00), as assessed for taxation for 1920, ($217,998.00); as assessed for taxation for 1921, ($222,525.00); as assessed for taxation for 1922, ($237,523.00). That the total valuation of the shares of all banks of Scott County, Kentucky, as assessed for taxation for the year 1919, was ($434,029.00); for the year 1920, ($455,139.00); for the year 1921, ($480,276.00), and for 1922, ($539,466.00).

That in each and every county in the State of Kentucky, on the assessing date for the taxing years 1919-1920-1921 and 1922, there were owned and held by individual citizens of each respective county, promissory notes, bonds and other securities for the payment of money, such as have been set out heretofore in respect to [fol. 13] Scott County, Kentucky, the total reasonable value of which on said assessing days was in each of said counties substantially the same or larger than the value of property so owned and held in Scott County, Kentucky, on said dates; that the total assessed valuation of National bank shares, and of state and National bank shares in said counties on each of said assessing dates was substantially the same as that in Scott County, Kentucky, and that the proportion that such total valuation of bank shares bears to the total valuation of such property in the hands of individuals citizens of each of said counties on each of said dates was substantially the same as in Scott County, Kentucky.

That under said laws of the State of Kentucky, hereinbefore set out, all of such property in the hands of individuals citizens of each of said counties, was on all of said dates, made subject only to a tax of forty cents per one hundred dollars of the assessed valuation, and was expressly exempted from all county, municipal and district taxes, whereas bank shares of all banks in all banks in all of said counties, including national banks, were by said law subjected and made liable, not only for state taxes, but for all county, municipal and district taxes of the county, state and taxing district within which such bank was located, altho all such property enumerated above, was moneyed capital in the hands of individual citizens of such county, and altho all such moneyed capital so owned and held in each of said counties by individual citizens thereof, came into direct and active competition with the banks of each of said counties and although such competition was material in amount.

[fol. 14] That the act of the Legislature, being section 4019-A-10, above referred to of the State of Kentucky, which permits and authorizes a tax to be levied for county purposes, and requires such tax to be paid by plaintiffs for its share holders, while at the same time,

it exempts individuals from paying any county taxes at all on money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured, and exempts such individuals from paying any county taxes at all on such notes, bonds and securities for the payment of money held by individual citizens of Scott County, Kentucky, as hereinbefore set out, is illegal and is null and void, and the tax bills made out there under for the years 1919-1920-1921 and 1922, and now in the hands of the Sheriff for collection, are illegal and void, and that such tax and levy, and said act under which same is attempted to be made, is in violation of the Fourteenth Amendment of the Constitution of the United States, and particularly in violation of and repu*ngen*t to section 5219 of the revised Statutes of the United States, and that said Sheriff and said Fiscal Court, is without any power or authority to make said levy of said tax against this plaintiff's shares, or to collect any part of said tax of ($2,870.65); for the years 1919-1920 and 1921, and ($941.01); for the year 1922.

Plaintiff says that the Constitution of Kentucky, Section 171, as amended in 1915, provides as follows:

[fol. 15] "The General Assembly shall provide by law an annual tax, which with other resources shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year.

Taxes shall be levied and collected for public purposes only, and shall be uniform upon all property of the same class, subject to taxation within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

"The General Assembly shall have power to divide property into classes, and to determine what class or classes of property shall be subject to local taxation. Bonds of the State and of counties, municipalities, taxing and school district shall not be subject to taxation."

It says that the law of the State of Kentucky, as contained in the Kentucky Statutes, section 4019-A-10 quoted above herein, is in violation of said provision of said Constitution in that it excludes shares of capital stock of banks from the class of property of "money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured", and in that it makes such bank shares subject to local taxation while it exempts such money in hand, notes, bonds etc. from such local taxation.

That the shares of plaintiff's capital stock of the same class of property as money in hand, notes, bonds, accounts and other credits whether secured by mortgage, pledge or otherwise, or unsecured, and [fol. 16] that they cannot be subjected to any further taxation than is imposed on said money in hand, notes, bonds etc. without violation of the provisions of the Constitution of Kentucky, above quoted, and it says that section 4019-A-10 of the Kentucky Statutes, by which the shares of capital stock of banks are made subject to local taxation, is unconstitutional and void, and that for that reason the Sheriff of Scott County and the said Fiscal Court of Scott County, are without any power or authority to make said levy of any such tax against plaintiffs bank shares for the years 1919, 1920, 1921 and

1922, as hereinbefore set out, or to collect any part of said tax of ($2,870.65); for the years 1919, 1920 and 1921, and $941.01 for the year 1922.

That the total county tax on plaintiff's shares now sought to be collected for the years 1919, 1920 and 1921, and now in the hands of the Sheriff, Ollie McFarland of Scott County, Kentucky, for collection is ($2,870.65);

That the total tax sought to be collected on plaintiff's shares for county purposes, and now in the hands of said Sheriff for collection for 1922 is ($941.01). That the defendant Fiscal Court, and the defendant, Sheriff, are now claiming that said taxes for said years 1919-1920, 1921 and 1922, as above set out, are now due, and demand has been made upon this plaintiff thru said defendant, Sheriff, that it pay said tax, and upon its failure to do so, the said Sheriff threatens and is empowered to collect all of said taxes from this plaintiff by distraint or levy, altho same are uncollectable, illegal and void as hereinbefore set out, and he will unless prevented by this court collect said tax by selling this plaintiff's property, and as a result thereof, this plaintiff will suffer great and irreparable injury against which it has no adequate remedy at law, and in fact no [fol. 17] remedy at all, except in a court of equity by order of injunction of such court restraining the defendant, Scott Fiscal Court, and the defendant, Sheriff, from in any way or manner to collect said taxes.

Plaintiff says that the injunction prayed for in this action has not been refused by a court or any Circuit Judge.

"Paragraph, No. 2"

For further cause of action herein, plaintiff says:

That by Section 4019-A-10 of the Kentucky Statutes, it is further made the duty of this plaintiff bank, to make a certain report to the assessing officer of the county in which said bank is located, and such assessing officer on said report shall assess the shares of said bank for tax purposes in his particular taxing district.

By Section 4020 of the Kentucky Statutes, all property is required to be assessed at its fair cash value.

That this plaintiff did file with the assessing officer of the County of Scott, and State of Kentucky, a statement showing its capital, surplus and undivided profits for the taxing year 1922 and that this plaintiff fixed as the fair cash value of its said shares in making said return, eighty-five per cent of the sum total of the book value of its said capital, surplus and undivided profits, namely the sum of ($119,000.00).

That without notice of any kind to this plaintiff, or without any chance for a hearing of any kind to the plaintiff, the tax officials of [fol. 18] said county arbitrarily and without right, raised the valuation and assessment of plaintiff's bank shares to more than its fair cash value, and fixed the same at the valuation of ($144,771.00);

That such raise in the valuation of plaintiff's shares without notice and without chance for a hearing, was unlawful and illegal and

without right, and that in any event it was unlawful and illegal to raise said shares to more than the fair cash value as was done, as above stated.

That after said assessment on said bank shares was unlawfully and illegally raised as above stated, to the figure of ($144,771.00) the Clerk of Scott County, Kentucky, as above stated, made out tax bills against plaintiff for both state and county taxes, and figured said taxes on said increased valuation of $25,771.00 at the state rate of forty cents per one hundred dollars and at the county rate of sixty-five cents per one hundred dollars, a total tax for the year 1922 on such increased valuation of plaintiff's shares of ($270.59); and that said tax bills so unlawfully and illegally made out, were certified by said Clerk to the Sheriff of Scott County, Kentucky, Ollie McFarland, for collection.

That as stated in paragraph one, all of said tax bills and tax on plaintiff's shares, in so far as it is figured for county purposes is unconstitutional, illegal and void, and such tax bill, in so far as the state tax on plaintiff's shares is concerned, is unconstitutional, illegal and void, except as to a tax at the rate of forty cents per one hundred dollars on plaintiff's bank shares, at the valuation of ($119,000.00), [fol. 19] that being the original valuation placed on said shares by this plaintiff before said illegal raise was made, and that being the fair cash value of said bank shares, and it says it has paid all tax for said year legally assessable and collectable against it.

That such raise in the assessed valuation of plaintiff's bank shares as above stated, without notice of any kind to this plaintiff, was in violation of the Constitution of the State of Kentucky, and in violation of the Fourteenth Amendment of the Constitution of the United States, in that it deprived this plaintiff of its property, without due process of law, and in that it deprived this plaintiff of the equal protection of the law, and that the tax of ($270.59) figured on such illegal raise on the valuation of said shares is uncollectable, illegal and void.

That the Sheriff, the defendant, Ollie McFarland, has said tax bill in his hands for collection, and will proceed to collect said tax for the year 1922 in full as certified to him in said bill unless restrained by this court.

That the amount of the county taxes assessed on the illegal increase in the valuation of plaintiff's shares for the year 1922, figured at the county rate for that year of sixty-five cents on each one hundred dollars of valuation is ($167.51), that the amount of the state tax on such illegal increase in the assessed valuation on plaintiff's shares for 1922, figured at the state rate of forty cents per one hundred dollars of the assessed valuation is ($103.08); making a total state and county tax for the year 1922, assessed against plaintiff's shares by [fol. 20] reason of said illegal increase in the valuation of such shares, ($270.59). That the said Fiscal Court, and the said sheriff, defendants herein, are now claiming that said tax as assessed on such illegal increase in the sum of ($270.59), for the year 1922, is now due, and demand has been made upon this plaintiff thru said defendant, Sheriff, that it pay such tax, and upon its failure to do so,

the said Sheriff threatens and is empowered to collect all of said tax from this plaintiff by distraint or levy, and he will unless prevented by this court collect said tax by selling this plaintiff's property, and as a result thereof, this plaintiff will suffer great and irreparable injury against which it has no adequate remedy at law, or indeed no remedy at all, except in a court of equity by order of injunction of such court, restraining the defendant, Scott Fiscal Court, and the defendant, Sheriff of Scott County, from in any way or manner proceeding to collect such taxes.

Plaintiff says that the injunction prayed for in this action has not been refused by a court or any Circuit Judge. Plaintiff again says that it has paid all taxes for the year 1922 except such as are illegal, uncollectable and void, as herein set out.

Wherefore, plaintiff prays for a temporary restraining order, enjoining and restraining the defendants from collecting or attempting to collect any of said tax for the year 1919, 1920 and 1921, said tax amounting as a whole for said years to ($2,870.65), being the tax assessed against plaintiff's shares for county purposes for said years, [fol. 21] and from collecting or attempting to collect any of said tax for 1922, said tax amounting to ($941.01), being the amount assessed against plaintiff's shares for county purposes for the year 1922, or from collecting or attempting to collect any part of the tax assessed for county and state purposes on the illegal increase in the valuation of plaintiff's shares for the year 1922, amounting to ($270.59); and prays that it be adjudged that the Act of the Legislature above set out, being Section 4019-A-10 of the Kentucky Statutes is in violation of and repugnant to Section 5219 of the revised statutes of the United States, and is in violation of and repugnant to Section 171 of the Kentucky Constitution as amended, and of the Fourteenth Amendment of the Constitution of the United States, and that same is null and void, and that the attempt of the defendant to charge to and collect from plaintiff any tax for local purposes on its said bank shares, is without authority of law, and that such attempt on the part of the defendants is unauthorized and illegal; and that it be further adjudged that the increase in the assessed valuation of plaintiff's bank shares for the year 1922, as set out in paragraph two, without notice to plaintiff, is illegal unauthorized and void, and that the tax both for state and county purposes on such illegal increase is uncollectable and void, and it further prays that upon the hearing for temporary injunction there be granted to it an injunction pendente lite of the above character, and that upon final hearing said temporary injunction be made permanent, and prays for its costs, and for all proper and equitable relief.

[fol. 22] (Signed) Bradley & Bradley and James Bradley, Attys. for Plff.

In Circuit Court of Scott County

[Title omitted]

Orders of Injunction—Filed Sept. 22, 1922

The defendants, Ollie McFarland, Sheriff of Scott County, Ky., and the Fiscal Court of Scott County Ky., composed of J. B. Ward, County Judge and Clayton Thomasom, T. K. Shuff and L. F. Aulick, county Commissioners are hereby enjoined from collecting or attempting to collect any tax for the year 1922 against the plaintiff, Georgetown National Bank except at the rate of forty cents for State purposes on each one hundred dollars of ($119,000.00); the assessed value of said plaintiff's shares of stock and $10,000.00 real estate as listed by plaintiff with the tax commissioner for the year 1922 and at the rate of sixty-five cents for county purposes on each one hundred dollars of the assessed value of plaintiff's real estate as listed by plaintiff with the tax commissioner and they and each of them are further enjoined from collecting or attempting to collect any tax whatever against plaintiff's property for the years 1919, 1920 and 1921.

Witness, B. B. Hall, clerk of said court this 22nd day of September 1922.

(Signed) B. B. Hall, C. S. C. C.

[fol. 23] There was issued upon the foregoing petition, an Order of Injunction, said order is as follows:

[Title omitted]

The Commonwealth of Kentucky to Ollie McFarland, sheriff of Scott County, Ky., and the Fiscal Court of Scott County, Ky., composed of J. B. Ward, county judge, and Clayton Thomason, T. K. Shuff, and L. F. Aulick, county commissioners:

You and each of you are hereby enjoined from collecting or attempting to collect any tax for the year 1922 against the plaintiff, Georgetown National Bank, except at the rate of forty cents for State purposes on each one hundred dollars of ($119,000.00); the assessed value of said plaintiff's shares of stock and ($10,000.00) real estate as listed by plaintiff with the tax commissioner for the year 1922 and at the rate of sixty-five cents for county purposes on each one hundred dollars of the assessed value of plaintiff's real estate as listed by plaintiff and you and each of you are further enjoined from collecting or attempting to collect any tax whatever against plaintiff's property for the years 1919, 1920 and 1921.

Witness, B. B. Hall clerk of said court this 22nd day of September 1922.

B. B. Hall, C. S. C. C.

[fol. 24] Said order of injunction is endorsed on the back thereof as follows:

Executed by delivering a true copy of the within order of injunction to Ollie McFarland, Sheriff of Scott County, and to J. B. Ward, County Judge of Scott County, this September 22nd 1922. (Signed) Ernest Ashurst, Coroner of Scott County.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRY—Oct. 2, 1922

The petition filed herein, on the 22nd day of September 1922, is this day noted of record.

[fol. 25] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

SUBMISSION OF DEMURRER TO PETITION—Oct. 22, 1922

This day came the defendants by attorney and filed a demurrer to the petition herein, and the court not being advised on said demurrer takes time.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

DEMURRER TO PETITION—Filed Oct. 22, 1922

Come the defendants herein and demur generally to the plaintiff's petition herein, and to each paragraph thereof on the ground that same does not nor does either paragraph thereof state sufficient facts to constitute a cause of action against those defendants.

(Signed) H. C. Ford, Atty. for Defendants.

[fol. 26] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

ANSWER—Filed May 28, 1922

Come the defendants, Ollie McFarland, Sheriff of Scott County, and J. B. Ward, Clayton Thomasson, T. K. Shuff, and L. F. Aulick,

composing the Fiscal Court of Scott County, Kentucky, and without waiving their demurrer to the plaintiff's petition and to each paragraph thereof, but still insisting that said petition and neither paragraph thereof states a cause of action against these defendants; for answer herein to the first paragraph of the plaintiff's petition, they deny that for the taxing year of 1919, or for the taxing year of 1920, or for the taxing year of 1921, or for the taxing year of 1922, money in hand, notes, bonds, accounts, or other credits, being moneyed capital in the hands of individual citizens residing in said state and county, or being property of the same class as plaintiff's bank shares, were subject to a tax under said Act of only forty cents per one hundred dollars of the assessed valuation; or that any money in hand, notes, bonds, or other credits, were moneyed capital in [fol. 27] the hands of individual citizens residing in said state and county, or were property of the same class as plaintiff's bank shares; and they deny that the clerk of Scott County correctly omitted to figure any county tax on the assessed valuation of the plaintiff's bank shares in making out the tax bills for the year 1919, 1920 and 1921, or that said clerk has wrongfully or illegally made out what is denominated corrected tax bills for said years, or in which he has wrongfully or illegally figured county taxes against plaintiff's bank shares for the taxing year 1919, at the rate of 70 cents per $100. of the assessed valuation of ($138,550.00); or for the taxing year 1920 at the rate of 70 cents per $100. of the assessed valuation of ($134,509.00); or for the taxing year 1921 at the rate of 65 cents per $100. of the assessed valuation of ($147,505.00); a total tax for the three years of ($2,870.65) or that said clerk for the year 1922, in figuring the tax bills against this plaintiff for said year, has wrongfully or illegally figured a county tax on plaintiff's said bank shares at the rate of 65 cents per $100. of the assessed valuation of $144,771.00; amounting to ($941.01); for the taxing year of 1922.

They deny that there were residing or doing business within the territorial limits of said county of Scott and State of Kentucky on July 1st 1918, at least two hundred and fifty or any individual citizens of said state and county, each of any of whom was the owner or holder on said date of various or any unsecured promissory notes, which were of the reasonable value in the aggregate of the sum of ($300,000.00); or any amount; or of various promissory notes [fol. 28] secured by mortgage on real estate which were of the reasonable value in the aggregate of ($600,000.00); or any amount, or of various promissory notes secured by pledge or mortgage on personal property which were of the reasonable value in the aggregate of ($200,000.00), or any amount; or of various bonds securities for the payment of money not otherwise tax free, which were of the reasonable value in the aggregate of ($200,000.00), or any amount, or that all or any of said notes or bonds or securities so owned or held on the assessing date for the year 1919 by such individual citizens of said county and state amounted in value in the aggregate to the sum of ($1,300,000.00), or any amount.

They deny that the total of the unsecured promissory notes owned or held by individual citizens of said county and state on July 1st, 1919, was of the reasonable value of ($350,000.00), or any amount, or of promissory notes secured by mortgage on real estate ($650,000.00), or any amount; or of promissory notes secured by mortgage or pledge on personal property, ($200,000.00), or any amount; or of bonds or securities for the payment of money, not otherwise tax free, ($200,000.00), or any amount; or a total of all such notes, bonds, securities, etc, on the assessing date for the year 1920 of the value of ($1,400,000.00), or any amount.

They deny that the total of unsecured promissory notes so owned or held by individual citizens of said county and state on July 1st, 1920, was of the reasonable value of ($500,000.00), or any amount; or of promissory notes secured by mortgage on real estate of ($1,000,000,00), or any amount, or of promissory notes secured by mortgage [fol. 29] or pledge on personal property, ($250,000.00), or any amount; or of bonds or securities for the payment of money, not otherwise tax free, ($200,000.00), or any amount; or a total of all such notes, bonds, or securities on the assessing date for the year 1921 of ($2,100,000.00), or any amount.

They deny that the total of unsecured promissory notes owned or held by individual citizens of said county and state on July 1st 1921, was of the reasonable value of ($400,000.00), or any amount; or promissory notes secured by mortgage on real estate, $800,000.00, or any amount; or promissory notes secured by mortgage or pledge on personal property, ($200,000.00), or any amount; or bonds or securities for the payment of money, not otherwise tax free, ($200,000.00); or any amount; or a total of any such notes, bonds, securities, etc., on the assessing date for the year 1922 of ($1,600,000.00), or any other amount.

They deny that all or any of said promissory notes, bonds, or securities so owned or held by such individual citizens of said county and state on the assessing dates on which taxes were assessed for each of said years, 1919, 1920, 1921, or 1922, were on the same terms, or were in the same form, or were in every or in any respect such notes, bonds, or securities as are handled by plaintiff bank in the conduct of its banking business; or that all or any of said property is of the same class as the bank shares of plaintiff; or that all or any of said property came or come into active or direct, or any competition with the banks of said county of Scott, State of Kentucky, or particularly or at all with plaintiff bank in carrying on its business, or loaning [fol. 30] its loanable funds or in buying or owning or selling or disposing of notes or bonds or other securities for the payment of money; or in making a profit by the use of its capital or surplus undivided profits in such manner.

They deny that said competition is relatively or actually material in amount, or that each or every or any item of said property so enumerated above constituted moneyed capital in the hands of individual citizens of said county and state, or was or is of the same class or kind of property as plaintiff's bank shares.

They deny that in each or every or any county in the state of Kentucky upon the assessing dates for the taxing years 1919, 1920, 1921, or 1922, there were owned, or held by individual citizens of each or any respective county, promissory notes, bonds, or other securities for the payment of money such as have been set out heretofore in respect to Scott County, Kentucky, or that the total reasonable value of the same on said assessment days was in each of said counties substantially the same or larger than the value of the property so owned or held in Scott County, Kentucky, on said dates, or of any value or that all or any such property was moneyed capital in the hands of individual citizens of such counties; or that same or any part thereof came into direct or active competition with the banks of each or any of said counties, or that such competition was material in amount.

They deny that the Act of the Legislature, being Section 4019 a-10, which permits and authorizes a tax to be levied for county purposes and requires such tax to be paid by plaintiff for its bank shares, is illegal or is null or void, or that the tax bills made out [fol. 31] thereunder for the years 1919-1920-1921 or 1922, are illegal, or are void; or that such tax or levy, or that said act under which same is attempted to be made is in violation of the fourteenth amendment to the Constitution of the United States; or particularly or at all in violation of or repugnant to Section 5219 of the revised Statutes of the United States, or that said Sheriff, or said Fiscal Court, is without any power or authority to make said levy for said tax against this plaintiff's bank shares, or to collect any part of said tax of ($2,870.65) for the years 1919-1920-1921; or ($941.01); for the year 1922.

They deny that the law of the State of Kentucky, as quoted in the Kentucky Statutes, Section 4019-A-10 is in violation of certain or any provision of said Constitution in that it excludes shares of capital stock of banks from the class of property of money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured; or in that it makes such bank shares subject to local taxes while it exempts such money in hand, notes, bonds, etc., from such local taxes.

They deny that the shares of plaintiff's capital stock are of the same class of property as money in hand, notes, bonds, accounts, or other credits, whether secured by mortgage, pledge, or otherwise, or unsecured; and deny that they can not be subjected to any further taxation than is imposed on said money in hand, notes, bonds, etc., without violating the provisions of the Constitution of Kentucky; and they deny that section 4010-A-10 of the Kentucky Statutes is [fol. 32] unconstitutional or void; or that the Sheriff of Scott County or the Fiscal Court of Scott County are without power or authority to make said levy of said tax against the plaintiff's bank shares for the years 1919-1920, 1921 and 1922, as hereinbefore set out; or to collect said tax of $2,870.65); for the years 1919-1920 and 1921, and ($941.01) for the year 1922; or that said taxes are uncollectable or illegal or void; or that plaintiff will suffer great, irreparable or any, injury by reason of the collection and enforcement of said tax.

"2"

For answer to paragraph 2 of the plaintiff's petition, the defendants deny that without notice of any kind to this plaintiff or without any chance for a hearing of any kind to the plaintiff the tax officials of said county either arbitrarily or without right, or at all, raised the valuation or assessment of the plaintiff's bank shares to more than its fair cash value; or that such raise in the valuation of the plaintiff's shares was without notice or without chance for a hearing; or was unlawful or illegal, or without right, or that in any event it was unlawful or illega-; or that said shares were raised to more than their fair cash value; or that said assessment on said bank shares was unlawfully or illegal raised to the figure of ($144,771.00); or at all; or that after said assessment was fixed at ($144,771.00); that the tax bills made out by the clerk of Scott County, Kentucky, against the plaintiff for state and county taxes were unlawfully or illegally made out; or that all or any of said tax bills, or tax on plain-
[fol. 33] tiff's shares, in so far as it is figured for county purposes, is unconstitutional or illegal, or void, or that said tax bill, in so far as the state tax on plaintiff's shares is concerned, is unconstitutional, or illegal, or void, except as to a tax at the rate of 40 cents per $100 on plaintiff's bank shares at the valuation of ($119,000.00) or that ($119,000.00); or that ($119,000.00) is the fair value of said bank shares; or is the original valuation placed on said shares by this plaintiff; or that the plaintiff was required or did in any manner place said valuation, or any valuation, on its bank shares; or that the plaintiff has paid all taxes for said year legally assessable and collectible against it.

They deny that there was any raise in the assessed valuation of plaintiff's bank shares as alleged in plaintiff's petition; or that there was any in the same without notice of any kind to the plaintiff; or that any such raise was in violation of the Constitution of the State of Kentucky, or in violation of the Fourteenth amendments of the Constitution of the United States, in that it deprived plaintiff of its property without due process of law; or in that it deprived the plaintiff of the equal protection of the law; or that the tax of ($270.59): on the valuation of said shares is illegal or is an illegal raise, or is uncollectible or void; or that the plaintiff will suffer great, irreparable, or any injury by reason of the enforcement and collection of said tax.

For further answer to the second paragraph of the plaintiff's petition, the defendants say that the manner of assessing bank shares for taxation in the state of Kentucky for the year 1922, as provided by Section 4019-A-10, is as follows:

[fol. 34] "Every State bank and trust company incorporated under the laws of this Commonwealth and every national bank doing business therein and located in any country, city, town, or taxing district in this Commonwealth shall make to the assessing officer of the county, city, town or taxing district a report showing the following facts, to-wit:

The name and postoffice address of the bank or trust company; the name of the president, cashier and board of directors thereof; the number of shares of stock and the par and market value of each share; the amount of surplus fund and undivided profits; the amount of its deposits; the amount of cash on hand; the amount of bonds; and other securities held by it; the amount loaned on mortgaged and the amount of its loans and discounts; the amount of value of all real estate situated in this Commonwealth, and owned by the bank and trust company on the first day of September of each year; and such other information as may be required.

The assessing officer of the county, city, town or taxing district wherein any trust company, State and National bank is situated shall assess the shares of such trust company, State and National bank for taxation for State, county, city, town and taxing district purposes.

Each bank and trust company shall be entitled to have deducted from the total valuation placed on its shares by said board the assessed value of its real estate in this State.

It shall be the duty of the trust company and banks to list with the county assessor of each county and with the assessing officer in [fol. 35] each city, town and taxing district its real estate an- pay the taxes thereon to the Sheriff and to the collecting officer of each city, town and taxing district, and such officer shall make out and return the assessment to the proper authorities of the county, city, town or taxing district at the same time and manner as prescribed by law for the return of the assessment of personal property herein.

"The equalization, collection, penalties and laws relating thereto now provided by law for other personal property in the county, city, town or taxing district, shall apply in like manner to the collection of the taxes herein provided for."

The defendants say that pursuant to said provision of the Kentucky Statutes the plaintiff did, by its Cashier George T. Hambrick, on July 20th, 1921, and for as of July 1st, 1921, make to the assessing officer of Scott County the report required by the statute, a true copy of which is filed herewith, marked Exhibit "A."

They say that said report so filed by the plaintiff showed "Capital Stock Paid in Cash ($75,000.00)" "Surplus Fund, Including Funds Transferred for Dividends not Paid Out and Expenses not Used on July 1st ($79,771.95)," making a total of capital and surplus of ($144,771.95); that said bank also listed with the county assessor of said county its real estate at the valuation of ($10,000.00), that the assessing officer of said county did thereupon in accordance with said law, after deducting the valuation of the plaintiff's real estate, fix and assess the value of the plaintiff's bank shares at the sum of ($144,771.95), which amount was the true and correct amount [fol. 36] taken from the report of the capital and surplus as filed by the plaintiff, after making said deducti-ng for real estate.

They state that said amount fixed by the assesser was the original and only assessment of said bank shares made by the assessor at the time and in the manner provided by law, and based upon the in-

formation given him by the plaintiff's report; that same was never, at any time nor in any manner, raised or increased by any assessing officer of said county.

They state that the equalization of property of said county, including the plaintiff's bank shares, is by law made by the board of Supervisors of said county, the time and place of whose meeting is fixed and provided by Section 4119 of the Kentucky Statutes as follows:

"The said supervisors shall convene at the county seat on the second Monday of March. At the time of their meeting the county clerk shall deliver to said supervisors the assessor's book for the county, together with the order and recommendations of the Tax Commissioner, which shall be considered by said board, with other information, in ascertaining and fixing the value of property in the county."

They state that the said Board of Supervisors did convene at the county seat of Scott County on the second Monday of March, 1922, and duly approved the said original assessment of the plaintiff's bank shares without raising or altering the same in any manner whatever; and the same was thereafter duly certified to the Sheriff for collection in the manner provided by law.

[fol. 37] They state that Section 4019-A-10, above quoted, which required the assessing officer of the county to fix and assess the value of plaintiff's shares of stock at the time and in the manner provided by said Statute constituted full and ample notice to the plaintiff that the said shares of stock would be assessed by said assessor on the basis of said report in the manner that it was done; and that said Section 4119 of the Kentucky Statutes constituted ample notice to the plaintiff of the time and place of the meeting of the Board of Supervisors of said county for the purpose of equalizing said assessment so made by the assessing officer upon the basis of the plaintiff's report.

Wherefore, having fully answered, the defendants pray that the plaintiff's petition be dismissed and that they recover from the plaintiff their costs herein expended; and they pray for all proper and equitable relief.

(Signed) H. C. Ford, Attorney for Defendants.

EXHIBIT "A" TO ANSWER

Report of Banks, Trust Companies, and Combined Banks and Trust Companies for the Purposes of Taxation on Bank Shares and Tax on Bank Deposits

This report must be made in duplicate, and must show the condition of the bank at the beginning of business on July 1st. One copy of the report must be filed with the County Tax Commissioner of the county in which the corporation is located, and the other [fol. 38] must be forwarded to the Tax Commissioner at Frankfort,

Kentucky. These reports should be made out and turned over to the proper officers not later than August 1st.

Report of Georgetown National Bank doing business in the town of Georgetown, County of Scott, State of Kentucky, at the beginning of business on July 1st, 1921

1. Loans and discounts	$1,017,113.97
2. United States and other bonds, stock and other securities	81,289.73
3. Capital stock paid in cash	75,000.00
4. Surplus fund, including funds transferred for dividends not paid out and expenses not used on July 1st	79,771.95
5. Undivided profits	.00
6. Deposit subject to check	486,757.68
7. Time deposits	144,035.07
8. Saving deposits	219,035.03
9. Number of shares of stock	750.
10. Par value of shares of stock	100.00
11. Market value of shares of stock	220.00
12. Book value of shares of stock	200.00
13. Actual value of shares of stock	200.00
14. Amount loaned on mortgages	170,142.60
15. Value of all real estate	15,000.00
16. Assessed value of real estate as of July 1st, 1921	10,000.00
17. Amount of real estate and fixtures charged off:	
Real estate	.00
Fixtures	.00

[fol. 39] Post office address of corporation: Georgetown, Ky.
Name and address of President: J. W. Thacker, Georgetown, Ky.
Name and address of cashier: G. T. Hambrick, Do. Do.
Name and address of each member of the Board of directors:

J. W. Thacker,	Georgetown, Ky.	R. H. Wolfe,	Georgetown, Ky.
V. A. Bradley,	Do.	L. B. Murphy,	Do.
J. L. Carrick,	Do.	G. T. Hambrick,	Do.
M. F. Thacker,	Do.	J. R. Downing,	Louisville, Ky.
J. Willie Hall,	Do.		

Annual Report of Georgetown National Bank, of Georgetown, Ky., at Georgetown, County of Scott, State of Kentucky, to State Tax Commissioner, July 1st, 19—

Total amount of deposits, including time deposits and saving deposits, July 1st, 1922 (Beginning of business July 1st)	$849,857.78

Amount of deposit not subject to taxation as follows:

To the credit of U. S. Government or government official, public funds	0
To the credit of State of Kentucky or State official, public funds	0
To credit of Scott County or county official public funds	2,529.47
To credit of city or city official, public funds	0
To credit of public schools—school board or treasurer of school fund—public funds	362.97
To credit of public library or endowment fund	118.01
[fol. 40] To credit of any religious or charitable institution of the State, charity alone	5,594.11
To credit of non-residents where money is not derived from business done in Kentucky	0
To credit of franchise paying corporations and domestic life insurance companies (name to be given elsewhere on this blank)	689.21
To credit of building and loan associations	4,707.54
To credit of other banks or trust companies	4,526.81
Total amount on deposit	849,857.78
Total amount of deposits not subject to taxation	18,528.12
Balance on deposit subject to taxation @ 10¢ on the $100	831,329.66
Total amount of taxes due under this report	831.33

Bank Deposit Report

List of Franchise-paying Corporations and Amount of Deposit

Kentucky Traction and Terminal Co.	689.21

STATE OF KENTUCKY,
County of Scott:

I, G. T. Hambrick, Cashier of above named corporation, do solemnly swear that the above statements are true to the best of my knowledge and belief.

(Signed) G. T. Hambrick.

Subscribed and sworn to before me by G. T. Hambrick on this the 20th day of July, 1921. (Signed) L. P. Bradley, Notary Public, Scott County, Kentucky. My Commission expires January 18th, 1922.

[fol. 41] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

SUMMONS—June 16, 1923

It appearing to the court from motion of the plaintiff, that it is material to the issues in this case to have certain records of the Kentucky State Tax Commission as evidence herein, Ben Marshall, Secretary of the State Tax Commission, is hereby ordered to appear before Harry Bright, a Notary Public of Franklin County, Kentucky, at the office of the state Tax Commission in Frankfort, Kentucky, to testify in behalf of the plaintiff in the above styled cause, and he will bring with him the records of said State Tax Commission, showing the list of intangible property given in for assessment in Scott County, Kentucky, as of July 1st 1921, and such other records of said Tax Commission as will be necessary for him to give comparison and figures on the intangible property assessed in the various counties of the State of Kentucky and he will also bring with him all reports on file in his office made by the Georgetown National Bank of Georgetown, Kentucky, for tax purposes in said year.

The said Harry Bright, Notary Public, of Franklin County, is hereby empowered to issue subpœna "duces tecum," for the said Ben [fol. 42] Marshall, in accordance with this order, to appear before him on Wednesday, the 19th, day of September, 1923, at the office of the State Tax Commission, between the hours of nine A. M. and five P. M. to give his deposition herein.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRIES—Oct. 1, 1923

Depositions for the plaintiff received thru the mail in good order on the 22nd day of September, 1923, and also Exhibits "A" "B" and "C" is this day filed and noted of record.

The deposition and also the Exhibits referred to in the foregoing order, will be found on pages 65 to 97.

[fol. 43] [Title omitted]

This day came J. Craig Bradley and filed Stipulation in regard to taking of proof in *in* the above styled case.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

STIPULATION RE STATEMENT OF PROOF—Filed Oct. 1, 1923

It is hereby stipulated and agreed by the parties, plaintiff and defendants hereto, that in the above styled case they will take proof in regard to the various issues of fact as of the assessing date, July 1st, 1921, for the taxes due and payable in the year 1922, and that they will take no specific proof as to the other years in question in this action, but that it will be understood and agreed, and it is hereby understood and agreed that the state of facts as shown to exist by the proof for the above mentioned year, will be taken as indicative of the facts for the other years in question, and that all the matters [fol. 44] at issue for the various years, shall be decided in accordance with the facts as they are shown to exist for that year.

(Signed) Jas. Bradley, Bradley, Bradley & Bradley, Attys. for Plaintiff, and H. C. Ford, Attorney for Defendants.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRY—Oct. 1, 1923

This day came the Georgetown National Bank, by attorney and filed its reply herein.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

REPLY—Filed Oct. 1, 1923

Comes the Georgetown National Bank and reply to the defendant's [fol. 45] answer herein, by consent of parties and leave of court, makes this a formal traverse of record of any affirmative allegations that there may be in the first paragraph of defendant's answer.

For further reply to the second paragraph of defendant's answer, plaintiff says that it is true that Section 4019-A-10 of the Kentucky Statutes, is as quoted in defendant's answer.

It says further however that pursuant to and acting under said section, certain blank forms were furnished the plaintiff bank, by the State Tax Commission, and by the assessing officer of Scott County, one of which blank forms is as quoted and copied in defendant's answer.

It says that in addition to said form copied in defendant's answer, there was a second form furnished to this plaintiff bank, by the State taxing authorities, and the assessing officer of Scott County, which form said bank was directed and required to fill out and return to the state and local assessing officer of Scott Co. Copy of this form as filled out and returned by plaintiff bank to the State Tax Commission, and to the local assessing officer of Scott County as of date 1st July, 1921, that being the assessing date, for the taxes due and payable in the fall of 1922, is filed herewith.

[fol. 46] It says that by said form it was required to and did place a valuation on its said bank shares of one hundred and nineteen thousand dollars ($119,000.00), but it says that without notice of any kind to it, and without a chance of any kind for it to be heard, said valuation was raised by the State Tax Commission and the local assessing officer of Scott County to the sum of one hundred and forty-four thousand, seven hundred and seventy-two dollars and ninety-five cents ($144,772.95); and said valuation so raised by the State Tax Commission, and the local assessing officer of Scott County, was returned to the office of the local assessing officer of Scott County, and again without notice of any kind to this plaintiff, said raised valuation was approved by the Board of Supervisors of Scott County, Kentucky, at their regular meeting in March 1922.

It says that said raise was made simply by running a pen thru the figures one hundred and nineteen thousand dollars ($119,000.00); and writing above said figures on the original form handed in by this plaintiff, the figures one hundred and forty-four thousand seven hundred and seventy two dollars and ninety-five cents (144,772.95), and that as stated above, same was without notice of any kind to plaintiff.

It denies that the amount, one hundred and forty-four thousand, seven hundred and seventy-two dollars and ninety-five cents ($144,772.95); was the original or only assessment of said bank shares or [fol. 47] that same was made by the Assessor at the time or in the manner provided by law, or that same was based upon information given by plaintiff's report, but says that the same was raised and increased by the assessing officers of the State and County as heretofore set out.

It says that it is true that section 4019-A-10 of the Kentucky Statutes, provides for the equalization of property as set out in defendant'd answer, but it denies that said report as filed by said bank, or said original assessment of plaintiff's bank shares was duly approved or approved at all by the Board of Supervisors without raising or altering same in any manner whatever, but says that same was raised, certified and approved as hereinbefore set out.

It denies that Section 4019-A-10 of the Kentucky Statutes constituted full or amply or any notice to plaintiff that its said shares of stock would be assessed by said Assessor on the basis of said report in the manner in which it was done, or that said Section constituted any notice to plaintiff of any kind in regard to said assessment, and it denies that Section 4019-A-10- of the Kentucky Statutes

constituted ample or any notice to plaintiff of the time or place of the meeting of the Board of Supervisors of said county, for the purpose of equalizing said assessment so made by the assessing officer upon the basis of plaintiff's report, or constituted any notice to plaintiff of any kind in regard to said assessment.

[fol. 48] It says that as quoted in defendant's answer, Section 4019-A-10- provides as follows:

"The equalization, collections, penalties and losses relating thereto now provided by law for other personal property in the county, city, town or taxing district, shall apply in like manner to the collection of taxes herein provided for."

It says further that by Section 4022 of the Kentucky Statutes it is provided:

"The Sheriff shall notify all such taxpayers whose list has been increased or assessed by the Board, and also notify them of the time to which the Board adjourns."

It says that as stated above, no notice either under this section or at all, was given this plaintiff of any raise made on its said bank shares, altho said assessing officer of the county, and said Board of Equalization, and said State Tax Commission did raise the assessment placed on its said bank shares as set out above

Wherefore, having fully replied to defendant's answer, it prays as in its original petition, and for all other proper relief.

(Signed) Bradley & Bradley, Attorneys for Plaff

[fol. 49] In Circuit Court of Scott County

[Title omitted]

Minute Entry—Oct. 1, 1923

This day came the plaintiff, by attorney and filed their amended petition herein.

In Circuit Court of Scott County

[Title omitted]

Amended Petition—Filed Oct. 1, 1923

For additional cause of action in so far as it seeks to enjoin the collection of the tax bills made out against it for the years 1919-1920 and 1921, the plaintiff comes and states that for said years it was its duty under Section 4019-A-19 of the Kentucky Statutes,

to list its bank shares for taxation; that it did do so, and the calcu-
[fol. 50] lation was placed thereon of one hundred and thirty-eight thousand, five hundred and fifty dollars (138,550.00) for 1919; one hundred and thirty-four thousand, five hundred and nine dollars (134,509.00) for 1920, and one hundred and forty-seven — dollars (147,557.00) for 1921.

That under Section 4239 A, it was the duty of the Clerk of the Scott County Court to make out tax bills for each of said years against this plaintiff on its said shares at the assessed valuation and to turn same over to the Sheriff of Scott County for collection.

That the said Clerk of the Scott County Court did make out such bills for each of said years in which the tax on plaintiff's said shares was computed at the rate of forty cents per one hundred dollars on said assessed valuation for each of said years, and the total tax due shown in said bills for each of said years. That said bills so made out were turned over to the Sheriff of Scott County for collection, and were presented to this plaintiff by said Sheriff, and duly paid by this plaintiff when due and it holds receipt therefor.

That thereafter, namely in the year 1922, said Clerk without notice of any kind, or opportunity for a hearing of any kind on the part of this plaintiff, made out additional tax bills against the shares of this plaintiff for each of said years denominated "corrected tax," in which a tax of seventy cents per one hundred dollars of said valua-
[fol. 51] tion was figured for 1919, and a tax of seventy cents per one hundred dollars of such valuation was figured for the year 1920, and a tax of sixty-five cents per one hundred dollars of assessed valuation for 1921, amounting in all for the three years to the sum of twenty-eight hundred and seventy dollars and sixty-five cents ($2,870.65); and tax bills so figured were made out for each of said years for said respective amounts by said Clerk, and turned over to the Sheriff for collection, and that such tax so figured and presented for collection in said tax bills was in addition to the tax paid by plaintiff for each of said years.

It says that such tax bills so made out are the same bills the collection of which is herein sought to be enjoined, for each of said years.

It says that said tax bills so made out for 1919-1920 and 1921, amounting in the ag-regate to said sum of twenty-eight hundred and seventy dollars and sixty-five cents ($2,870.65); were made out by said Clerk without any right or authority of any kind, that same are illegal, void and of no effect, and are illegal, void and of no effect in the hands of the Sheriff of Scott County, and for that reason are uncollectable and unassessable by him against this plaintiff, and that the Sheriff, the defendant herein, has no right or authority of any kind of nature whatsoever, under said tax bills, or at all to enforce collection of said sums as represented by said tax bills against this plaintiff.

[fol. 52] It says that the defendant, the Fiscal Court, and the defendant, the Fiscal Court, and the defendant Sheriff of Scott County, are now claiming that said tax as represented by said bills for the years 1919, 1920, and 1921 as above set out, are now due, and de-

mand has been made upon this plaintiff thru said defendant, Sheriff, that it pay said tax, and upon its failure to do so, the Sheriff threatens to collect all of said taxes from this plaintiff by distraint or levy, altho same are illegal and void as hereinbefore set out, and he will unless prevented by this court collect said tax by selling this plaintiff's property, and as a result thereof plaintiff will suffer great and irreparable injury against which it has no adequat- remedy at law, and in fact no remedy at all, except in a court of equity by order of injunction of said court restraining the defendant, Scott Fiscal Court, and the defendant, Sheriff from in any way or manner proceeding to collect said tax.

Comes plaintiff and for further cause of action herein, says that Section 174 of the Constitution of the State of Kentucky is as follows:

"Corporate, to be Taxed Like Individual Property—Income—License—Franchises.—All property whether owned by natural persons or corporation, shall be taxed in proportion to its value, unless exempted by this Constitution, and all corporate property shall pay [fol. 53] the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income licenses or franchises."

It reiterates and reaffirms all the allegations in its original petition in which the rate of taxation on bank shares, and all other classes of personal property, is set out in full. It says further that the law of the State of Kentucky as contained in the Kentucky Statutes, Section 4019-A-10 quoted heretofore, in its original petition, is in violation of said provision of said Constitution in that, by placing a tax of forty cents on certain property, namely "money in hand, notes, bonds, accounts and other credits, whether by mortgage, pledge or otherwise, or unsecured," and held by individuals and by placing a different and a higher rate on plaintiff's bank shares, plaintiff being a corporation, it subjects corporate property, namely, Plaintiff's bank shares, to a different and higher rate of taxation from that imposed on individuals' property, namely, money in hand, notes, bonds, etc., as set out above.

It again says that the shares of plaintiff's capital stock are of the same class of property as money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and that under said Section they cannot be subjected [fol. 54] to any higher or different rate of taxation than is imposed on said money in hands notes, bonds, etc., owned by individuals, without violating the above quoted provision of the Constitution of the State of Kentucky, and for that reason it says that Section 4019-A-10 of the Kentucky Statutes, is unconstitutional and void, and further that the Sheriff of Scott County, and said Fiscal Court of Scott County, are without any power or authority to make said levy of any such tax against plaintiff's bank shares for the years

1919, 1920 and 1921 and 1922, as hereinbefore set out, or to collect any part of said tax for said years as hereinbefore set out.

Wherefore, it prays as in its original petition, and for all other proper relief.

(Signed) Bradley & Bradley, Attorneys for Plaintiff.

[Title omitted]

[fol. 55] In Circuit Court of Scott County

[Title omitted]

Minute Entry of Filing of Answer—Oct. 3, 1923

This day came the defendants, without waiving its demurrer to amended Petition heretofore filed, but insisting and relying on said demurrer files its answer to amended petition and counter claim herein.

In Circuit Court of Scott County

[Title omitted]

Demurrer to Amended Petition

Come the defendants and demur generally to the amended petition herein filed by the plaintiff on the ground that said amended petition and no part ther-of sets up any facts sufficient to constitute a cause of action herein.

(Signed) H. C. Ford, Attorney for Defendants.

[fol. 56] In Circuit Court of Scott County

[Title omitted]

Answer to Amended Petition—Filed Oct. 3, 1923

Come the defendants, and, without waiving their demurrer herein, for reply to the amended petition herein filed state it is true that the Clerk of the Scott County Court made out and delivered to the Sheriff corrected tax bills for the years set out in the petition and amended petition and that it was necessary for the Clerk to make out said corrected tax bills by reason of the facts that the original tax bills made out by the Clerk failed to include any of the tax due from the plaintiff except the tax due for state purposes only; and the corrected tax bills were made out for the purpose of including upon said tax bills the taxes due for each of said years from the plaintiff for

county purposes and that as so corrected the said tax bills for the years of 1919, 1920, 1921, and 1922, correctly showed the amount of tax due for each of said years from the plaintiff for county purposes at the rate duly fixed by the Fiscal court of Scott County, for each of said years for county purposes in accordance with the assessment of the bank shares of the plaintiff as shown by the Assessor's books of said county; and the defendants deny that said tax bills were made out by the Clerk without right or authority, or that same were illegal or void or of no effect in the hands of the Sheriff of Scott County or that they are uncollectable or unassessable by him against the plaintiff, or that the defendant Sheriff has no right or authority [fol. 57] of any kind or nature under said tax bills to enforce the collection of said sums as represented by said tax bills against the plaintiff; but they say that said tax bills were made out by said clerk in the performance of his official duty under the laws made and provided for that purpose and are valid and legal tax bills in the hands of said Sheriff subject to be enforced by him and col-ected by him as other taxes.

For further answer to said amended petition the defendants deny that the shares of the plaintiff's capital stock are the same class of property as money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured or that under Section 174 of the Constitution or any other part of the constitution they can not be subjected to any higher or different rate of taxation than is *impnased* on said money in hand notes, bonds etc. owned by individuals without violating the Constitution of the State of Kentucky; but they say that pursuant to and in accordance with the Constitution the said bank shares are made and constitute a specific class of property and; deny that Section 4019-A-10 of the Kentucky Statutes is unconstitutional; or void, but say that the classification of bank shares under the said provision of the Kentucky Statutes is legal and valid and in accordance with Section 171 of the Constitution of Kentucky, as amended, which provides:

[fol. 58] "The General Assembly shall have power to divide property into classes and to determine what class or classes *or* property shall be subject to local taxation."

Paragraph Number 2

Come the defendants, J. B. Ward, Clayton Thomasson, T. K. Shuff, and L. F. Aulick, and state that they compose the Fiscal Court of Scott County, and for further answer herein and by way of counterclaim against the plaintiff the said Scott Fiscal Court for the use and ben*i*fit of Scott County, says that the rate duly fixed by order of the Fiscal Court of Scott County purposes was the sum of 70 cents upon each $100.00 of property assessed for the taxing year of 1919, and 70 cents upon each $100.00 of assessed valuation for the taxing year of 1920, and 65 cents per $100.00 for the assessed valuation for the taxing year of 1921, and 65 cents per $100.00 of the assessed *n*aluation for the taxing year of 1922; and they state

that for the taxing year of 1919 the shares of the plaintiff were duly assessed at the sum of ($138,550.00); and for the year 1920 at (-134,509.00), and for the year 1921 at ($147,575.00), and for the year 1922 at ($144,771.00); and they state that in each of said years the clerk of the Scott County Court, whose duty it is under the law to make out the tax bills for state and county taxes for said county and state, by mistake omitted to include any county tax on the tax [fol. 59] bills made out for each of said years against the plaintiff, Georgetown National Bank, on the assessed valuation of its bank shares, and only figured the rate of taxation for state purposes on the plaintiff's bank shares, and that by reason thereof the plaintiff failed to pay any part of its said taxes to Scott County for any of said years upon its bank shares. And now, for counter*cal*im herein, the said Fiscal Court of Scott County, for and on Behalf of Scott County, says that the plaintiff owes as taxes to Scott County the sum of 70 cents per $100.00 upon the sum of (-138,550.00); for the year 1919; and the sum of 70 cents per $100.00 upon the sum of (-134,509.00); for the year 1920; and the sum of 65 cents per $100.00 upon (-147,-575.00); for the year 1921; and the sum of 65 cents per $100.00 upon (-144,771.00); for the year 1922; no part of which has been paid, although demand has been made therefor by the Sheriff and corrected tax bills have been made out and presented for said taxes; that in addition to said taxes the said plaintiff owes the interest and penalties provided by law, by reason of its failure to pay said taxes, no part of which has been paid.

The defendants say that if for any reason that said corrected tax bills in the hands of the Sheriff are invalid or are unenforce-able by [fol. 60] the Sheriff, that these defendants are entitled nevertheless to recover from the plaintiff for the use and benefit of Scott County the amount of said taxes for each of said years figured at the rate her-inbefore stated upon the assessable valuation of said bank shares as above stated.

Wherefore, the defendants, having fully answered, pray that the plaintiff's petition and amended petition be dismissed, but if the court should be of the opinion that the corrected tax bills herein-above referred to are invalid or unenforce-able in the hands of the Sheriff, the Scott Fiscal Court prays judgment upon its cross petition for the use and benefit of Scott County against the plaintiff for the amount of said taxes due for county purposes in each of said years at the rate fixed as hereinabove stated upon the assessed valuation of the plaintiff's bank shares assessed in each of said years; and they pray for their costs herein expended and all proper relief.

(Signed) Ford & Ford, Attorneys for Defendants.

[fol. 61] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRY OF FILING OF DEMURRER—Oct. 5, 1923

This day came the plaintiff by attorneys and filed a demurrer to the second paragraph of defendants' answer to the amended petition, and to the second paragraph of the counter-claim therein, and the court not being advised on said demurrer takes time.

[fol. 62] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

DEMURRER TO ANSWER TO AMENDED PETITION—Filed Oct. 5, 1923

Comes the plaintiff, Georgetown National Bank, and demurrers to the second paragraph of defendants' answer to the amended petition, and to the second paragraph of the counterclaim therein presented, because same does not state facts sufficient to constitute an answer to said amended petition, or to constitute a counter-claim against this plaintiff.

(Signed) Bradley & Bradley, Attorneys for Plaintiff.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

ORDER OVERRULING DEMURRER—Oct. 5, 1923

The demurrer filed her-in by plaintiff to the second paragraph of defendants' answer to the amended petition and to defendants' counter-claim, heard by the court is overruled to which ruling of [fol. 63] the court, plaintiff objects and excepts, thereupon by agreement of parties all affirmative allegations of the first paragraph of said answer and county-claim are traversed of record, and by agreement of parties the original petition of plaintiff may be and the same is taken as reply to the said answer and counter-claim as a whole.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRY OF FILING STIPULATION OF FACTS—Oct. 19, 1923

This day came V. A. Bradley, by agreement and filed stipulation of facts in the above styled cause.

[fol. 64] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

STIPULATION OF FACTS—Filed Oct. 19, 1923

For the purpose of the trial of this case, it is stipulated and agreed that there are two Building and Loan Associations now located and doing business in Georgetown, Scott County, Kentucky, one the Scott County Building and Loan Association, and the other the Georgetown Building and Loan Association.

That each of said Building and Loan Associations are engaged in the business of loaning money on real estate mortgages on city property in the city of Georgetown.

That the Scott County Building and Loan Association had loaned out in the year 1921 on such real estate mortgages, the sum of ($56,000.00), and that the Georgetown Building and Loan Association had loaned on such mortgages in said year, the sum of ($70,000.00). That the amount of tax to be paid by said Building and Loan Associations is fixed by Section 4919-A-5, and 4019-A-8 [fol. 65] of the Kentucky Statutes, and that such tax is fixed at one dollar for each one thousand dollars paid in on its capital stock.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRY OF FILING TESTIMONY AND EXHIBITS—Oct. 19, 1923

This day came Victor A. Bradley and filed depositions for the plaintiff herein and also Exhibits Tax Receipts.

The depositions and also the Exhibits referred to in the foregoing order will be found on pages 98 to end of this *of this* transcript.

[fol. 66] IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

MINUTE ENTRY—Oct. 19, 1923

On motion of the attorney of the plaintiff this cause is ordered heard.

[fol. 67] IN CIRCUIT COURT OF SCOTT COUNTY

JUDGMENT—Oct. 19, 1923

This cause coming on for hearing and being submitted to the court first on the pleadings and particularly on the demurrer to

plaintiff's petition, it is now adjudged by the court that the demurrer to said petition, and to each and very paragraph thereof, be and the same is hereby overruled to which ruling of the court in overruling said demurrer to said petition, and to each and every paragraph thereof, defendant objected and excepted at the time, and still excepts, the cause then being submitted to the court on the pleadings, proof and argument of counsel, and the court being advised, it is now adjudged that there are in the hands of individuals who are citizens and residents of Scott County, Kentucky, money in hand, Notes, bonds, and other credits, secured by pledge, mortgage and otherwise and unsecured, which said notes, bonds and other credits etc. so held by such individuals come into direct and active competition with the bank shares of plaintiff, and with the conduct of its banking business generally, and that such competition is material in amount, which said property is of the same class and character of property as plaintiff's bank shares, and that Section 4019-A-10 of the Kentucky Statutes, attempts to impose a higher and greater rate of taxation on plaintiff's said bank shares than it does on such property above enumerated in the hands of such individuals, and that by said Act such property in the hands of individuals is subject to a tax for state purposes only of forty cents per one hundred dollars of assessed valuation, whereas by said act plaintiff's bank shares are made subject in addition to said forty [fol. 68] cent tax rate to a county and a municipal tax. It is further adjudged that Section 4019-A-10 of the Kentucky Statutes in so far as it imposes any tax on the shares of Nat'l Banks in the State of Kentucky, in excess of the state tax at the rate of forty cents per one hundred dollars assessed valuation, that being the sum total of taxes imposed by said Act on money in hand, notes, bonds, accounts and other credits, whether secured by pledge, mortgage or otherwise, or unsecured, in the hands of individual owners residing in said state, is in violation of and repugnant to section 5219 of the United States Revised Statutes, and of the Fourteenth Amendment of the Constitution of the United States, and of Section 171 of the Kentucky State Constitution, and it is further adjudged that for said reason said portion of said act is null and void.

It is further adjudged that for the reasons above given, the tax bills against plaintiff's bank shares for the years 1919, 1920, and 1921, made out by the County Clerk of Scott County, and presented to plaintiff by the Sheriff of Scott County for payment, which said tax bills are for tax on plaintiff's bank shares in excess of the rate of forty cents per one hundred dollars on assessed valuation are illegal and uncollectable; and it is further adjudged that the tax bill for the year 1922 for the same reason is illegal and uncollectable except [fol. 69] for such portion of said bill as represents a tax on plaintiff's bank shares at the rate of forty cents per one hundred dollars on the assessed valuation of one hundred and nineteen thousand dollars ($119,000.00), and a tax rate of one dollar and five cents ($1.05) per one hundred dollars on the assessed valuation of plaintiff's real estate as given in for said year. It is therefore adjudged

that the injunction herein, be made permanent, and that the Fiscal Court of Scott County, and the Sheriff of Scott County, defendants herein, be and they are perpetually enjoined and restrained from collecting any of said Tax bills as presented in this action for the yearse 1919, 1920 and 1921 and from collecting any of said tax bill for the year 1922, except a tax on plaintiff's bank shares at the rate of forty cents per one hundred dollars on the assessed valuation of one hundred and nineteen thousand dollars ($119,000.00), and a tax of one dollar and five cents ($1.05) per one hundred dollars on the assessed valuation of ten thousand dollars on plaintiff's real estate.

It is further adjudged that the raise on the assessed valuation of plaintiff's bank shares attempted to be made by the State Tax Commission of the State of Kentucky, by which the valuation on said shares was attempted to be raised from one hundred and nineteen thousand dollars ($119,000.00) as given in by plaintiff for assessment, to the valuation of one hundred and forty-four thousand, seven hundred and seventy-one dollars ($144,771.00), is null and void, for the reason that no notice of any kind was ever given to [fol. 70] plaintiff bank, of such attempted raise as herein set out, and it is adjudged that no tax is collectable against plaintiff's said bank shares except on the assessed valuation of one hundred and nineteen thousand dollars ($119,000.00) as originally given in by said bank.

To all of which ruling of the court, the defendants and each of them objects and excepts, and pray an appeal to the Court of Appeals, which is granted.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

TESTIMONY OF BEN MARSHALL

The deposition of Ben Marshall, taken at the office of the Tax Commission, in Frankfort, Kentucky, on Wednesday, September 10th, 1923, to be used in behalf of the plaintiff in the above-styled action, now pending in the Scott Circuit Court, written acceptance of notice on the part of the defendants being filed herewith.

[fol. 71] Appearances: For plaintiff, Judge James Bradley, J. Craig Bradley, both of Georgetown, Ky.; for defendants, H. Church Ford, of Georgetown, Ky.

The deponent, BEN MARSHALL, being first duly sworn, testified as follows:

Direct examination.

By J. Craig Bradley, counsel for the plaintiff:

1. Please state your full name, age and present occupation?

A. Ben Marshall; 61; Secretary State Tax Commission.

2. As Secretary of the State Tax Commission are you in charge of the records of the Commission?

A. I am.

3. I ask you as a part of your deposition to make from your records a certified copy of the intangible, personal property list filed by the County of Scott, State of Kentucky, as of taxing date July 1st, 1921, for the taxes due and payable in the Fall of 1922, showing in [fol. 72] detail the various kinds of intangible property listed in that county for that year for taxation.

A. I have a certified copy of the intangible schedules filed as of July 1st, 1921, by the various taxpayers of Scott County, which I now file, marking it "Marshall Exhibit A."

4. Does the Kentucky State Tax Commission get out an annual report showing the various assessed valuations of banks, assessment of intangible property, real estate, etc., for each year in Kentucky?

A. It does.

5. I show you a compilation which purports to be such a compilation for 1922 and ask you if that is the official compilation for that year?

A. Yes; that is the official compilation, and the assessment as reported in that was made as of July 1st, 1921.

6. And was made from the original assessment blanks as filed with the Commission?

A. Yes, sir.

7. Please make that a part of your deposition, marking it "Marshall, Exhibit B."

A. I will.

8. I call your attention to page 52 of that report and ask you to state what the total valuation of bank shares in the State of Kentucky was in the year 1922, as of July 1st, 1921?

A. $64,183,735.00.

[fol. 73] 9. I call your attention to that column and to the figures in the first column to the left and ask you if those figures indicate counties?

A. Those figures, beginning with 81 at the top and ending with 120 at the bottom, indicate counties,—beginning with McLean and ending with Woodford.

10. Then the lesser figures are on another page for the other counties?

A. Yes, sir.

11. And the total opposite those numbers represents the total value of bank shares for that particular county?

A. Yes, sir.

12. And the total at the bottom of the column is the total for the entire State?

A. Yes, sir.

13. I call your attention, too, to the column immediately preceding that in which the total value of bank shares, is given, and ask you if that represents the total value of intangible personal property for the counties?

A. It does.

14. And the $309,704,155 is the total for the entire State of intangible?

A. It is.

15. Have you or not any compilation that shows the various items that go to make up the total intangible property in the various counties and in the State as a whole for that year?

A. I have not; the only one that I have is that of Scott county, which was made at your request.

16. I call your attention to page 59 of this same compilation and ask you if that is a recapitulation of the total assessed value of the [fol. 74] intangible property, real estate, etc., of the State for that year?

A. It is.

17. As Secretary of the Commission do you have charge also of the original reports filed by the various banks of Scott County for taxation for this year?

A. I have.

18. I show you the reports filed by the Georgetown National Bank for that year and ask you if you will make a copy of those reports and file them as a part of your deposition, marking them "Marshall Exhibit C"?

A. I will.

19. I call your attention to the particular blank which is headed "Assessment of Banks and Trust Companies, Real Estate and Bank Shares for 1921," and I note that in the column "Bank Shares" the assessment was originally given in by the bank as $140,000 less 15%—$119,000. That is correct, is it not? That is the way it came in originally?

A. Yes, sir.

20. I note that the $119,000 is scratched out in red pencil. I will ask you if that was done at this office?

A. That was done under the instructions of this office.

21. Then the figures $144,772 were written above under the same instructions?

A. Yes, sir; under the same instructions.

22. How did your office arrive at the total to which you raised the assessment,—$144,772.00?

A. By adding the capital surplus and the undivided profits as [fol. 75] shown on page two of the blank a- 11- 12- which was filed at the same time.

23. These two blanks are filed at the same time and are the official blanks sent out by the Tax Commission for the banks to make their report on, are they not?

A. They are.

24. I note in the same blank to which I have called your attention that there are other figures scratched out and different totals placed above them. The figures scratched out, I take it, were the original figures given by the Bank?

A. They were.

25 And the figures placed above were the raised figures placed there by this office?

A. Yes.

26. I will ask you if similar raises were made in the same way on other banks?

A. They were.

27. And for the same purpose, to raise their valuation to a total of 100% of capital, surplus and undivided profits?

A. Yes.

28. The assessment as originally given in by the Georgetown National Bank was at the rate of 85% of this total?

A. That is correct.

29. I also call your attention to the Farmers Bank of Georgetown, [fol. 76] Kentucky, and ask you if their report was originally given in at the 84% rate?

A. Same thing.

30. And changed the same way?

A. Yes, sir.

31. I also call your attention to the First National Bank of Georgetown, Kentucky, to the same bank, and ask you if the same condition exists?

A. Yes, sir.

32. These reports as changed were then certified back to the local assessor? That is correct is it not?

A. These reports changed in this office and sent back to the local assessor for him to O. K. and enter on his books as the change was then made.

And further the Deponent sayeth not.

(Signed) Ben Marshall.

The Notary Public Certificate attached to the foregoing deposition is as follows:

STATE OF KENTUCKY,
County of Franklin, set:

I, Harry G. Bright, a Notary Public in and for the aforesaid State [fol. 77] and County, certify that the foregoing deposition of Ben Marshall was taken before me at the time and place and for the purpose set out in the caption; that said witness was duly sworn before deposing, and that said evidence was taken down by me in shorthand and afterwards reduced to typewriting, and that the foregoing typewritten transcript constitutes a true, full and accurate — thereof.

I further certify that the dependent read the said typewritten transcript when same was produced to him by me, after which he signed same in my presence.

I further certify that the appearances as to counsel were set out on page two hereof, and that neither plaintiff nor defendants were present in person.

In testimony whereof, witness my notarial seal and hand this the 19th. day of September, 1923.

(Signed) Harry G. Bright, Notary Public, Franklin County, Kentucky. My commission expires February 19th, 1925. (Seal.)

Acceptance of notice to the taking of the deposition referred to in the foregoing is as follows:

[fol. 78] Notice of the taking of the deposition of Ben Marshall for Wednesday, September 19th, 1923, at Frankfort, Kentucky, is hereby accepted.

(Signed) H. C. Ford, Attorney for Defendants.

IN CIRCUIT COURT OF SCOTT COUNTY

[Title omitted]

SUMMONS AND SHERIFF'S RETURN

It appearing to the court from motion of the plaintiff, that it is [fol. 79] material to the issues in this case to have certain records of the Kentucky State Tax Commission as evidence herein, Ben Marshall, Secretary of the State Tax Commission, is hereby ordered to appear before Harry G. Bright, a Notary Public for Franklin County, Kentucky, at the office of the State Tax Commission in Frankfort, Kentucky, to testify in behalf of the plaintiff in the above styled cause, and he will bring with him the records of said State Tax Commission, showing the list of intangible property given in for assessment in Scott County, Kentucky, as of July 1st, 1921, and such other records of said Tax Commission as will be necessary for him to give comparison and figures on the intangible property assessed in the various counties of the State of Kentucky, and he will also bring with him all reports on file in his office, made by the Georgetown National Bank of Georgetown, Kentucky, for tax purposes in said year.

The said Harry G. Bright, Notary Public, of Franklin County, is *here* hereby empowered to issue subpœna duces tecum, for the said Ben Marshall, in accordance with this order, to appear before him on Wednesday, the 19th day of September, 1923, at the office of the State Tax Commission, between the hours of nine A. M. and five P. M. to give his deposition herein.

The subpœna referred to in the foregoing order is as follows:

To the Sheriff of Franklin County, Kentucky, Greetings:

[fol. 80] You are hereby commanded to summons Ben Marshall, Secretary of the State Tax Commission, to appear before me at the office of the State Tax Commission in Frankfort, Kentucky, on Wednesday, the 19th day of September, 1923, to testify on behalf of the plaintiff in the case of Georgetown National Bank against Ollie McFarland & Etc., now pending in the Scott Circuit Court, and he will bring with him the records of the State Tax Commission, showing the list of intangible property given in for assessment in Scott County, Kentucky, as of July 1st, 1921, and such other records of said Tax Commission as will be necessary for him to give comparison and figures on the intangible property assessed in the various counties of the State of Kentucky and he will also bring with him all reports on file in his office, made by the Georgetown Nat'l. Bank of Georgetown, Kentucky, for tax purposes in said year.

Given under my hand and notarial seal, this the 19th, day of Sept., 1923.

(Signed) Harry G. Bright, Notary Public, Franklin County, Kentucky. My commission expires Feby. 19th, 1925. (Seal.)

Said Subpœna is endorsed on the back thereof as follows:

[fol. 81] Executed in full September 19th, 1923.
(Signed) John M. Lucas, S. F. C., by R. Carey Mahan, D. S.

The Exhibits referred to on page 40, order No. 5, and also referred to in the foregoing deposition of Ben Marshall and "Ma-ked Marshall Exhibit A," is as follows:

In Circuit Court of Scott County

Statement of Evidence

MARSHALL EXHIBIT "A"

Assessment of Intangible Property in Scott County as of July 1st, 1921

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
1. Mr. Sudia F. Atkins	.....	.....	14,000	.....	.....	.....	$14,000
2. Elisha Alexander	.....	.....	100	.....	.....	.....	100
3. L. F. Aulick	.....	.....	12,500	3,500	.....	.....	16,000
W. R. Alford	.....	.....	2,200	.....	.....	.....	2,200
5. B. Anderson, Trustee	.....	.....	.....	.....	.....	.....	.....
6. Mrs. Bob Hinton	.....	.....	.....	.....	.....	394	394
7. Adams & Cassidy	.....	.....	.....	1,500	500	.....	2,000
8. J. W. Adams	.....	.....	.....	200	.....	.....	200
9. L. S. Atkins	.....	.....	24,000	.....	.....	.....	24,000
10. W. S. Allphin	.....	.....	.....	.....	300	.....	300
11. Elnora, Kate and 12. Lualla Allen	.....	.....	2,000	.....	.....	.....	2,000
13. W. D. Ashurst	.....	.....	.....	.....	200	.....	200
14. Geo. H. Allen	.....	.....	.....	2,000	.....	.....	2,000
15. Mrs. Fida F. Adams	.....	.....	7,480	.....	.....	.....	7,480
16. W. F. Anderson	.....	.....	700	.....	.....	.....	700
17. A. P. Brown	.....	1,120	.....	.....	.....	.....	1,120
18. Jas. Bradley, Gdn.	.....	.....	.....	7,000	.....	.....	7,000
19. Jas. Bradley	.....	.....	8,000	.....	.....	.....	8,000

Assessment of Intangible Property—Continued

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
20. Jas. Bradley, Tr.	.....	.....	6,000	.....	.....	.....	6,000
21. S. P. Bryant	.....	.....	1,500	.....	.....	.....	1,500
22. Mrs. Laura Burgess	.....	.....	2,000	.....	.....	.....	2,000
[fol. 83]							
23. Bradley Studio	.....	.....	.....	.....	300	.....	300
24. W. D. Beatty	.....	.....	.....	4,000	.....	.....	4,000
24. M. M. Bell	.....	.....	1,111	.....	.....	.....	1,111
24. O. J. Bramuback	.....	.....	4,100	.....	.....	.....	4,100
27. N. C. Bailey	.....	.....	.....	1,000	.....	.....	1,000
28. Church Barkley	.....	.....	.....	100	.....	.....	100
29. J. F. Blythe	.....	.....	50	.....	.....	.....	50
30. Jones & Barkley	.....	.....	.....	.....	750	.....	750
31. J. W. Bridges	.....	.....	12,200	.....	.....	.....	12,200
32. V. A. Bradley	.....	4,900	.....	.....	.....	.....	4,900
33. John H. Bean	.....	.....	500	.....	.....	.....	500
34. Marshall Biddle	.....	.....	500	.....	.....	.....	500
H. C. Biddle	.....	.....	1,600	.....	.....	.....	1,600
36. W. H. Burgess	.....	.....	.....	170	.....	.....	170
37. J. Craig Bradley	.....	.....	900	.....	.....	50	950
38. Mrs. J. W. Barkley	.....	.....	14,000	.....	.....	.....	14,000
39. Geo. Barnhill	.....	.....	1,200	.....	.....	.....	1,200
40. B. F. Bridges	.....	.....	19,500	3,000	.....	.....	22,500
41. H. Bridges	.....	.....	11,975	.....	.....	.....	11,975
42. Dave Blythe	.....	.....	1,200	.....	.....	.....	1,200

43. Mrs. W. A. Blythe			800				800
44. N. M. Burgess			2,000				2,000
[fol. 84]							
45. W. R. Bailey			150				150
46. Harry Craig					200		200
47. Cecil Cantrill							
48. Trustee & etc.		7,260					7,260
49. J. T. Cunningham			175				175
50. R. T. Coghill			650		3,500		4,150
51. Nancy E. Cooper			14,000				14,000
52. Miss Sarah E. Curtis			12,600				12,600
I. A. Congleton, Agt						677	677
54. W. J. Carley			8,500	5,283			13,783
55. Jessie Campbell			2,000				2,000
56. Onie Cook			2,500				2,500
57. A. Cartinpone			166				166
58. Andrew Cunningham			500				500
Tom Cunningham			100				100
60. Mrs. Flora Caldwell			500				500
61. Mrs. Minnie Crutcher		2,150	4,111				6,261
62. Dr. R. D. Coffman			2,325				2,325
63. Mrs. Florence Cook			14,850				14,850
64. B. S. Calvert			6,385				6,385
65. R. B. Drake			700				700
66. R. J. Drake			5,000				5,000
[fol. 85]							
67. Albert De Moss			2,000				2,000
68. A. Dunn			300				300

Assessment of Intangible Property—Continued

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
69. W. S. Dickerson	800	.....	.....	.....	.....	.....	800
70. J. I. Davis	.....	.....	5,500	.....	.....	.....	5,500
71. Ward Duvall	.....	.....	3,000	.....	.....	.....	3,000
72. C. S. Davis	.....	.....	3,000	.....	.....	.....	3,000
73. Jack H. Dycus	.....	.....	.....	.....	.....	17,596	17,596
74. Mary H. Edwards	.....	.....	2,000	.....	.....	.....	2,000
75. J. A. Barkley	.....	.....	330	.....	.....	.....	330
76. D. S. Farmer	.....	.....	5,000	4,500	.....	.....	9,500
77. Farmers Bank & Trust Co. Trustee M. M. Bastel	.....	.....	5,600	.....	.....	.....	5,600
78. Same for Levi Prewitt	.....	.....	20,000	.....	.....	.....	20,000
79. Thos. F. Finneran	.....	300	.....	.....	.....	.....	300
80. Ed Flynn	.....	.....	150	.....	.....	.....	150
81. L. L. Fugett	.....	.....	7,050	.....	.....	.....	7,050
82. Chas. P. Fields, Gdn	.....	.....	1,400	.....	.....	.....	1,400
83. J. S. Fleming	.....	.....	7,500	.....	.....	.....	7,500
84. J. L. Fleming	.....	.....	2,000	.....	.....	.....	2,000
85. Wm. Flag	.....	935	.....	5,000	.....	.....	5,935
86. Chas. P. Fields	.....	1,270	.....	.....	.....	.....	1,270
87. Mrs. Fannie Gano	.....	.....	800	.....	.....	.....	800
[fol. 86]							
88. J. C. Ginn	.....	.....	.....	.....	300	.....	300
89. Mrs. Carrie Goldslowing	.....	.....	1,125	.....	.....	.....	1,125
90 Miss Martha R. Green	.....	25	.....	.....	.....	.....	439

91. Golden & Parry	.....	.....	.....	.....	200	.....	200
92. W. C. Graves	.....	.....	44,300	.....	.....	.....	44,300
93. Mason Generals	.....	.....	.....	100	.....	.....	100
94. C. O. Graves	.....	3,000	595	.....	.....	.....	3,595
95. Mrs Lida Garth Gidson	.....	.....	4,500	.....	.....	.....	4,500
96. Mrs John S. Gaines	.....	.....	8,475	.....	.....	.....	8,475
97. John S. Gaines	.....	.....	2,290	.....	.....	.....	2,290
98. James B. Glass	.....	.....	.....	2,000	.....	.....	2,000
99. J. B. Graves	.....	.....	140,000	.....	.....	.....	140,000
100. Mrs Mary Graves	6,000	.....	.....	.....	.....	.....	6,000
101. Mrs A. T. Glenn	.....	.....	3,650	.....	.....	.....	3,650
102. Ernest Graves	.....	.....	1,200	.....	.....	.....	1,200
103 Emma K. Herndon	.....	.....	1,900	.....	.....	.....	1,900
104. Mrs Charles Hall	.....	.....	3,150	.....	.....	.....	3,150
105. W. P. Hinton	.....	.....	260	.....	.....	.....	260
106. H. J. Honeykamp	.....	.....	4,000	1,000	.....	.....	5,000
107. Mrs Massie Hamon	.....	.....	4,000	.....	.....	.....	4,000
108. G. T. Hambrick & J. R. Downing Trustee & Etc	.....	.....	40,000	.....	.....	.....	40,000
109. F. E. Hall,	.....	.....	6,000	.....	.....	.....	6,000
[fol. 87]							
110. Susan Herndon	.....	.....	4,200	.....	.....	.....	4,200
111. D. R. Henderson & Wife	.....	.....	.....	.....	200	.....	200
112. Mrs. Lillie Huggins	.....	.....	3,600	.....	.....	.....	3,600
113. M. L. Hughes	.....	.....	2,550	.....	.....	.....	2,550
114. G. W. Hayden	.....	.....	.....	400	.....	.....	400
115. Orie Hardin	.....	.....	2,000	.....	.....	.....	2,000
116. Mrs. W. T. Hunleugh	.....	.....	13,300	.....	.....	.....	13,300

Assessment of Intangible Property—Continued

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
117. Hichey Brothers	.....	.....	.....	2,000	.....	.....	2,000
118. T. C. Henry	.....	.....	95	.....	.....	.....	95
119. C. T. Hendricks	.....	.....	5,000	.....	.....	.....	5,000
120. J. M. Hendricks	.....	.....	1,000	.....	.....	.....	1,000
121. B. B. Hall	.....	.....	13,000	.....	.....	.....	13,000
122. R. A. Hamilton	.....	100	.....	.....	.....	.....	100
123. J. A. Hamilton, Admr	.....	.....	3,400	.....	.....	.....	3,400
124. Tom Hook,	.....	.....	175	.....	.....	.....	175
125. J. W. Howard	.....	.....	.....	275	.....	.....	275
126. F. W. Hudson	.....	.....	10,000	.....	.....	.....	10,000
127. Herring Henkins & Co.,	.....	....	.....	1,000	14,000	.....	15,000
128. Ira W. House	.....	.....	6,000	.....	.....	.....	6,000
129. Henry Hutton	.....	.....	1,960	.....	.....	.....	1,960
130. Lorena Hamilton	.....	.....	1,000	.....	.....	.....	1,000
131. Thos. Hitchen	.....	.....	100	.....	.....	.....	100
132. Mrs J. W. Ingram	.....	.....	2,000	.....	.....	.....	2,000
[fol.88]							
Mrs. E. J. Jones	.....	.....	3,200	.....	.....	.....	3,200
134. W. T. Jones	.....	.....	800	.....	.....	.....	800
135. Mrs. J. L. Jackson	.....	.....	450	.....	.....	.....	450
136. Johnson & Wright	.....	.....	.....	.....	500	.....	500
137. Mrs. Fannie Jenkins	.....	.....	800	.....	.....	.....	800
138. Oscar Jameson	.....	.....	23,667	.....	.....	.....	23,667
139. Garland Johnson	.....	.....	.....	400	.....	.....	400

140. Daisy & J. G. Johnson				200			200
141. John P. Jarvis				100			100
142. Mrs. W. T. Juett			3,000				3,000
143. G. B. Johnson			2,100				2,100
144. Bernard Johnson			1,500				1,500
145. Jameson & Nichols			1,000				1,000
146. Orah N. Jameson			17,686				17,686
147. Johnson & Levley			560		600		1,160
148. J. Kenley			4,000				4,000
149. J. W. Keller				1,550			1,550
150. Mrs. Lizzie Kenney			6,800				6,800
151. Robert Kravetz				300			300
152. J. E. Lutterall			190				190
153. Lewis Coal & Supply Co.					200		200
154. Arthur Lawless			2,435	610			3,045
[fol. 89]							
155. Lair, Daviess & Moss				250	3,000		3,250
156. J. S. Lancaster			1,300	90			1,390
157. Arthur Lawless, Admr.			3,500	1,500			5,000
158. W. L. Linville				200			200
159. Seth Luke				50			50
160. Logen & Haggin			6,000		3,000		3,000
161. Mrs. John A. Lewis			1,866				1,866
162. R. Lancaster			365				365
163. Mrs. S. A. Lancaster			7,000				7,000
164. Mrs. Laura Lancaster				150			150
165. Morris & Crenshaw					2,000		2,000
166. S. J. Marshall			10,000				10,000

Assessment of Intangible Property—Continued

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
167. Lide Mulberry	.....	.....	1,000	1,000	.....	.....	2,000
168. W. W. McCabe	.....	.....	700	.....	.....	.....	700
169. C. W. Mallory	.....	.....	.....	.....	200	.....	200
170. W. A. Marshall	.....	.....	500	.....	.....	.....	500
171. Geo. McDowell	.....	.....	14,700	.....	.....	.....	14,700
172. Dr. Wm. D. Mason	.....	.....	.....	.....	1,000	.....	1,000
173. W. O. Murphy	.....	.....	175	.....	.....	.....	175
174. E. E. Muddiman	.....	.....	.....	110	90	.....	200
175. W. O. Moss	.....	.....	115	.....	.....	.....	115
176. A. J. Mefford	.....	.....	.....	100	.....	.....	100
[fol. 90]							
177. Logen, Haggin & Cooper	.....	.....	.....	1,000	1,000	.....	2,000
178. M. F. Martin	.....	.....	2,000	.....	.....	.....	2,000
179. L. B. Murphy	.....	.....	20,000	.....	.....	.....	20,000
180. James Mullholland	.....	.....	11,000	.....	.....	.....	11,000
181. W. B. Munson	.....	.....	.....	1,000	200	.....	1,200
182. Annie Muddiman	.....	.....	300	.....	.....	.....	300
183. McKenney & Baumstalk & Co.	.....	.....	.....	13,000	.....	.....	13,000
184. McMeekin & Ashurst	.....	.....	.....	.....	2,000	.....	2,000
185. John M. McMeekin	.....	.....	.....	12,000	.....	.....	12,000
186. F. S. Milners	.....	.....	4,450	500	.....	.....	4,950
187. Dr. Maude D. Moore	.....	.....	1,050	.....	.....	.....	1,050
188. Geo. W. Murphy	.....	.....	6,500	.....	.....	.....	6,500
189. J. T. McFarland	.....	.....	200	.....	.....	.....	200

190. A. R. Murphy	.....	.....	500	.....	.....	.....	500
191. E. P. McKenney	.....	.....	2,000	.....	.....	.....	2,000
192. Joel M. Neale	.....	.....	16,681	.....	.....	.....	15,681
193. J. T. Neal, Agt	.....	.....	.....	1,300	.....	.....	1,300
194. Mrs. Ora H. Nutter	.....	.....	4,250	.....	.....	.....	4,250
195. Jas. Y. Nutter	.....	.....	200	.....	.....	.....	200
196. Lewis R. Nelson	.....	.....	.....	500	2,000	.....	2,500
197. J. C. Nichols	.....	1,590	.....	.....	.....	.....	1,590
198. G. H. Nunnelley Co	.....	.....	.....	40,000	20,000	.....	60,000

[fol. 91]

199. Mary J. Nelson	.....	.....	600	.....	.....	.....	600
200. G. H. Nunnelley	.....	.....	.....	18,000	.....	.....	18,000
201. R. F. Offutt	.....	.....	21,000	.....	.....	.....	21,000
202. Mrs. Sallie Hall Offutt	.....	.....	3,000	.....	.....	.....	3,000
203. R. S. Oldham	.....	.....	700	.....	.....	.....	700
204. M. Viley Offutt & Wife	.....	.....	26,934	690	.....	.....	27,624
205. L. Price	.....	.....	156	.....	.....	.....	156
206. Penn. Lumber & Coal Co	.....	.....	.....	.....	4,000	.....	4,000
207. Peoples Roller Mills Co	.....	.....	.....	.....	2,000	.....	2,000
208. Mrs. Hattie Paterson	.....	.....	6,000	.....	.....	.....	6,000
209. B. H. Penn	.....	.....	9,300	1,400	.....	.....	10,700
210. J. A. Ribble	.....	.....	500	.....	.....	.....	500
211. Penn & Parker	.....	.....	.....	.....	500	.....	500
212. Prathers Bros	.....	.....	.....	.....	1,000	.....	1,000
213. O. H. & E. J. Prather	.....	.....	1,000	.....	.....	.....	1,000
214. M. C. Price	.....	.....	500	.....	.....	.....	500
215. J. S. Penn	.....	.....	.....	2,000	.....	.....	2,000
216. L. H. Paxton	.....	.....	1,000	.....	.....	.....	1,000

Assessment of Intangible Property—Continued

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
217. Dr. J. E. Pack	.....	.....	2,000	.....	200	.....	2,200
218. D. L. Penn, Exor	.....	.....	7,000	.....	.....	.....	7,000
219. Nannie L. Perry	.....	1,111	1,500	.....	.....	.....	1,500
[fol. 92]							
220. T. J. Penn	.....	.....	1,025	.....	.....	.....	1,025
221. Mrs. Pearl Plummer	.....	.....	1,680	.....	.....	.....	1,680
222. N. A. Quillen	.....	50	.....	.....	.....	.....	50
223. J. O. Ross	.....	.....	1,450	.....	.....	.....	1,450
224. W. A. Richardson & Bro	.....	.....	.....	1,800	.....	.....	1,800
225. L. H. Reeves	.....	.....	3,000	.....	.....	.....	3,000
226. J. W. Robinson & Bro	.....	.....	12,400	.....	.....	.....	12,400
227. Rouse Bros.	.....	.....	4,500	.....	.....	.....	4,500
228. J. J. Rovan	.....	.....	.....	200	.....	.....	200
229. C. B. Roberts and 230. Jameson	.....	.....	2,750	.....	.....	.....	2,750
231. C. V. Robinson	.....	.....	500	.....	1,500	.....	2,000
232. C. B. Roberts	.....	.....	1,500	.....	.....	.....	1,500
233. L. D. Robey	.....	.....	1,125	.....	.....	.....	1,125
234. J. M. Scarbrough	.....	.....	.....	125	.....	.....	125
235. P. K. Shropshire	.....	.....	3,000	.....	.....	.....	3,000
236. John Sharron	.....	.....	135	95	.....	.....	230
237. A. Stewart	.....	.....	.....	.....	400	.....	400
238. J. W. Sechrest	.....	.....	100	.....	.....	.....	100
239. G. W. Southworth	.....	.....	50	.....	.....	.....	50

240. N. B. & E. B. Stockdell	.....	.....	5,000	.....	.....	.....	5,000
241. L. F. Sinclair	.....	.....	900	.....	.....	.....	900
[fol. 93]							
243. Security Trust Co. Trustee & etc.	.....	.....	13,582	2,780	.....	.....	16,362
244. Arthur W. Steele	.....	.....	3,000	.....	.....	.....	3,000
245. Mrs. Puggie Samuels	.....	.....	500	.....	.....	.....	500
246. Thos. L. Stowers	.....	.....	75	.....	.....	.....	75
247. W. M. Shirley	.....	.....	.....	600	.....	.....	600
248. Mrs. Mal Roberts	.....	4,085	14,300	500	.....	.....	18,885
249. L. Y. Stone	.....	.....	5,200	.....	.....	.....	5,200
250. W. R. Sinford	.....	.....	500	100	.....	.....	600
251. W. R. Sinford, Admr	.....	.....	2,400	.....	.....	.....	2,400
252. A. D. Stephens	.....	.....	2,980	.....	.....	.....	2,980
253. C. D. Smith	.....	.....	.....	.....	300	.....	300
254. T. F. Sheritt	.....	.....	1,500	.....	.....	.....	1,500
255. Noah Thomas	.....	.....	8,000	.....	.....	.....	8,000
256. Cynthia Thomason	480	.....	1,200	.....	.....	.....	1,680
257. G. B. Towles & Bridges	.....	.....	1,950	.....	.....	.....	1,950
258. M. F. Thacker	.....	.....	.....	2,000	.....	.....	2,000
259. Traylor & Abbott	.....	.....	500	.....	.....	.....	500
260. Mrs. Alice W. Thomas	.....	.....	7,000	.....	.....	.....	7,000
261. R. B. Thomas	.....	.....	1,000	.....	.....	.....	1,000
262. J. M. Turner	.....	.....	4,000	.....	.....	.....	4,000
263. J. C. Tarlton	.....	.....	1,700	.....	.....	.....	1,700
[fol. 94]							
264. W. Z. Thomson & Family	181,000	.....	12,461	4,102	.....	.....	197,563

Assessment of Intangible Property—Continued

Names of taxpayers	Bonds	Stock	Secured notes	Unsecured notes	Accounts	Other intangible	Total assessment
265. W. H. Thomas	.....	.....	.....	.....	120	.....	120
266. Thacker Bros.	.....	.....	.....	.....	500	.....	500
267. J. B. Towles	.....	.....	290	.....	.....	.....	290
268. L. P. Perry	.....	.....	2,100	.....	.....	.....	2,100
269. A. B. Traylor	.....	.....	.....	749	.....	200	949
270. J. W. Vance	.....	.....	700	.....	.....	.....	700
271. Miss Lutie Vallendingham	.....	.....	600	.....	.....	.....	600
272. J. M. Wight	.....	.....	1,125	.....	.....	.....	1,125
273. C. P. Wheeler	.....	.....	.....	.....	1,500	.....	1,500
274. W. C. Williams	.....	.....	300	.....	.....	.....	300
275. Boone Wallace	.....	.....	.....	1,200	.....	.....	1,200
276. Waivey Woolums	.....	.....	150	.....	.....	.....	150
277. J. S. Willmott	.....	.....	.....	1,000	.....	.....	1,000
278. T. J. Wells	.....	.....	100	.....	.....	.....	100
279. Wallace Gro. Co.	.....	.....	.....	.....	1,000	.....	1,000
280. C. D. Winters	.....	.....	150	.....	.....	.....	150
281. J. B. Ward	.....	.....	.....	1,500	.....	.....	1,500
282. Mrs. Ruth E. Ware	.....	.....	.....	4,500	.....	.....	4,500
283. Wilson & Nunnelley	.....	.....	.....	.....	500	.....	500
284. Shed Warring	.....	.....	1,245	.....	.....	.....	1,245
285. J. H. Warring	.....	.....	50	.....	.....	.....	50
[fol. 95]							
286. Orkie Wise	.....	.....	.....	100	.....	.....	100
287. J. S. Wilmott	.....	.....	25,833	.....	.....	.....	25,833

288. W. O. Wigginton	.....	.....	4,200	.....	.....	.....	4,200
289. T. H. Wright	.....	.....	2,000	.....	1,500	.....	3,500
290. W. A. Wright	.....	.....	210	.....	.....	.....	210
291. Susie Watson	.....	.....	1,285	.....	.....	.....	1,285
292. Mrs. S. P. Willis	.....	.....	1,700	.....	.....	.....	1,700
293. George Wash	.....	.....	700	.....	.....	.....	700
294. Zeying & Chinn	.....	.....	.....	.....	3,000	.....	3,000
J. C. Zeying	.....	.....	11,000	.....	.....	.....	11,000
296. L. T. Dryden	.....	.....	3,000	.....	.....	.....	3,000
Totals	$188,280	$38,450	$1,060,726	$159,111	$74,760	$18,917	$1,540,244
Percentages	12.44%	2.22%	69.06%	10.51%	4.54%	1.22%	

[fol. 96] STATE OF KENTUCKY,
County of Franklin, set:

I, Ben Marshall, Secretary State Tax Commission do hereby certify that the foregoing nine (9) pages contain a true and accurate list of Tax-payers in Scott County, Kentucky, who listed Intangible property for taxation on July 1st 1921, I further certify that said foregoing (9) pages contain the exact and true amount of said Intangible property listed by the said tax-payers respectively, as of said date, as is shown by the record and files of the office of the State Tax Commission.

Given under my hand as Secretary of State Tax Commission, this September 4th, 1923.

(Signed) Ben Marshall, Secretary State Tax Commission.

MARSHALL EXHIBIT "C"

Exhibit "C" referred to in order No. 5, on page 40 and also referred to in the foregoing deposition of Ben Marshall marked "Marshall Exhibit C" is as follows:

September 17th, 1921.

Georgetown National Bank, Georgetown, Ky.

GENTLEMEN: We find from an inspection of your report on form [fol. 97] A-11-12, under the item of surplus fund you show $79,771.95 and on your report for Assessment of Banks and Trust Companies," $75,000.

Please advise us which amount is correct.

Yours very truly, State Tax Commission. (Signed) J. A. Scott, Chairman.

Assessment of Banks and Trust Companies

Real Estate and Bank Shares 1921

Banks and Trust Companies are requested to fill this blank in duplicate, attach one copy of the same to your report to be sent to the State Tax Commission at Frankfort and one copy to your report required to be sent to your County Tax Commissioner, as of July 1st each year.

Georgetown National Bank, Georgetown, Kentucky

July 1st 1921.

1. Capital Stock (Same as shown on form A 11-12)..	$75,000
2. Surplus (same as shown on form A-11-12).....	75,000
3. Undivided Profits (same as shown on form A-11-12)	.....
4. Real estate charged off the bank's since the organization of the bank (Real estate sold by the bank not — be entered herein).....	.....
Total of lines 1, 2, 3 and 4, showing total assets of the bank.....	150,000
Less Real Estate assessed for taxation (same as on form A-11-12)	10,000
[fol. 98] Bank Shares (is the amount remaining after deducting from total the assessed value of real estate).....	$144,772.95

STATE OF KENTUCKY,
County of Scott, set:

G. T. Hambrick, says that he is an officer of the above named Bank or Trust Company, that he has access to the Books and records of said Bank or Trust Company, and that the statement is true and correct.

(Signed) G. T. Hambrick, V. P. & Cashier (Official Title).

Under the law and the Regulations of the State Tax Commission, all property should be assessed at 100% of its value.

Said report is endorsed on the back thereof as follows:

Filed July 30th, 1921. State Tax Commission. Ora E. Hazelip, Corporation Clerk.

STATE OF KENTUCKY,
County of Franklin, set:

I, Ben Marshall, Secretary State Tax Commission, do hereby certify the foregoing page and the attached sheet, contain a true and accurate copy of the form 13a, which was filed with the State Tax Commission on July 30th, 1921, examined and corrected in this office and returned to the County Tax Commissioner of Scott Co. for his inspection and for entry upon the assessor's book for the year 1921.

[fol. 99] I further certify that the attached sheet contains a true and correct copy of a letter written to the said Georgetown National Bank in relation to the changes made on the said report as appears from the records and files of the said State Tax Commission.

Witness my hand as said Secretary, this September 19th, 1923.

(Signed) Ben Marshall, Secretary State Tax Commission.

STATE OF KENTUCKY,
County of Scott, set:

I, G. T. Hambrick, cashier of the above named corporation do solemnly swear that the above statements are true to the best of my knowledge and belief.

(Signed) G. T. Hambrick.

Subscribed and sworn to before me by G. T. Hambrick on this 20th day of July, 1921. (Signed L. P. Bradley, Notary Public, Scott County, Kentucky. My commission expires January 18th, 1922.

Said report is endorsed on the back as follows:

1921 assessment of Georgetown National Bank, Georgetown, Kentucky. Filed July 30th, 1921. State Tax Commission. Ora E. Hazelip, Corporation Clerk.

STATE OF KENTUCKY,
Franklin County, set:

I, Ben Marshall, Secretary State Tax Commission do hereby certify that the foregoing is a true and complete copy of the report made by the Georgetown National Bank on July 1st 1921, for the purpose of taxation, as appears from the records and files of the said State Tax Commission.

Witness my hand as said Secretary, this September 19, 1923.
(Signed) Ben Marshall, Secretary State Tax Commission.

[fol. 103] The depositions for the plaintiff referred to on page 60 in order No. 13 is as follows:

GEORGETOWN NATIONAL BANK, Plaintiff,

vs.

OLLIE MCFARLAND, & ETC., Defendants

DEPOSITION

The deposition of G. T. Hambrick, taken at the law offices of Bradley and Bradley, in Georgetown, Scott County, Kentucky, on the 28th day of September, 1923, pursuant to agreement of counsel, to be read as evidence in behalf of the plaintiff on the above-styled cause.

There were present Bradley and Bradley and James Bradley, as attorney- for plaintiff, and H. C. Ford, attorney for the Commonwealth.

Direct examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. Give your full name, age and present occupation?

A. George T. Hambrick, forty-nine, Vice-President and Cashier of the Georgetown National Bank.

Q. Were you Vice-President and Cashier of the Georgetown National Bank on July 1st, 1921?

A. Yes, sir.

Q. Have you a statement in your possession showing the amount of real estate mortgage paper held by your bank *bank* at that time, [fol. 104] the amount of collateral paper and the amount of unsecured paper?

A. Yes, sir.

Q. Please give that to the stenographer.

A. Real estate mortgage paper, $170,142.60. Collateral paper, $35,773.82. Unsecured paper, or secured by personal security only, $806,574.00.

Q. Did you prepare a tax assessment for your bank for the various years that you have been cashier?

A. Yes, sir.

Q. Did you prepare the assessment given in for July 1921?

A. Yes, sir.

Q. I show you a copy of statement for that year filed with the deposition of Ben Marshall, and ask you if that is a correct copy of the statement given for that year?

A. It is.

Q. Are these two blanks, which are forms 13-A and Form A 1112, the regular blanks sent out by the State Taxing authorities for banks?

A. Yes sir.

Q. I call your attention to form 13-A, and call your attention to the tine "bank shares" and ask you what was the valuation placed on your bank shares as originall- handed in by you on that form?

A. $119,000.00.

[fol. 105] Q. I notice that there is a red line thru the $119,000.00 and $144,772.00 written above it in pencil, did you or any other agent of the Georgetown National Bank write these figures there?

A. We did not.

Q. Did the Georgetown National Bank receive any notice of any kind from the State Tax Commission, that the valuation placed on your bank shares that year, had been changed from $119,000.00, to $144,772.00?

A. We did not.

Q. Did your bank receive any notice from the assessing officers of Scott County, that that raise had been made on your bank shares?

A. We did not.

Q. After the Board Supervisors met for that year for Scott County, were you given by that Board any notice of any raise on the valuation of your bank shares?

A. We were not.

Q. When was the first time that you, or your bank, was aware that the valuation placed on your bank shares in this form, had been raised from $119,000.00 to $144,772.00?

A. When we went to pay our taxes.

Q. How long have you been in the banking business in Scott County, Kentucky?

A. About twenty-five years.

[fol. 106] Q. How long have you been Cashier of the Georgetown National Bank?

A. About Fourteen years.

Q. Previous to that time did you hold any other position with the same bank?

A. Yes sir.

Q. What was that?

A. Assistant Cashier.

Q. Do you consider that you are familiar with the general circulation of money in your county, the amount of money usually held by individuals in the county, and general loan condition in the county?

A. I think I am.

Q. The list of notes held by individuals in Scott County as of the assessing date, July 1st, 1921, unsecured, show a total of $159,000.00 of such as shown by the list filed with the deposition of Ben Marshall, from your knowledge of conditions in Scott County, and from your knowledge of notes held by individuals unsecured, what percentage in your opinion, does this $159,000.00 represent of the unsecured notes held by individuals in Scott County?

A. I would say thirty-five per cent.

Q. In your opinion then, there is some sixty-five to seventy per cent of unsecured notes held by individuals in Scott County in addi-

[fol. 107] tion to those given in for taxation as shown by this list?

A. Yes sir.

Q. It is charged in the petition that notes held by individuals, both secured and unsecured, bonds held by individuals, and other forms of credit held by them, come into competition with your bank shares, and with the conduct of your banking business. Will you state just how in your opinion, and to what extent such loans, and what securities held by individuals do compete with your bank?

A. Banks make money, for its share holders in two ways. By loans to individuals, firms and corporation, and by investing its funds in bonds and other securities. Bank loan on real estate mortgages, loan secured by collateral, and loans secured by personal securities. Banks invest in Government, Railroad, Industrial Bonds, State, County and Municipal bonds, State warrants, county warrants, and city warrants. Now the individual takes up a large per cent of the high rate paper, thus forcing banks to keep their surplus funds on deposit with their city correspondents, on which they receive interest at the rate of two and a half to three per cent. He forces them to employ their funds in investment of lower rate securities, such as Government bonds and Treasury certificates. Individuals loaning money operate in two or three ways against the interest

[fol. 108] of banks. Not only taking investments from the banks, but withdrawn funds on deposit, thereby lessening the earning powers of the bank.

When an individual loans his money, the borrower feels no obligation to do business with any particular bank, whereas when a bank makes a loan it forms a tie between the individual and the loaning bank, thereby increasing the bank's business. I have known cases where individuals have made loans at a smaller rate of interest than was being charged by the banks, and borrowers would get their money from individuals and pay the bank and in many instances this very money was withdrawn from the bank whose loan was paid off.

The individual lender has no operating expenses, whereas the overhead of banks amount to a very large sum. For instance in the case of the Georgetown National Bank, the expenses of this bank, irrespective of taxes, and interest paid on deposits, amounts to at least twenty per cent of the per value of the capital stock, and the taxes amount to about seven per cent of the par value of the capital stock.

A. In your statement in answer to the last question you said that one phase of competition was that by the individual lender absorbing the local high rate paper, you were forced to keep money on deposit in your correspondents' bank at a low rate, and forced to invest in other low rate securities such as Government bonds, etc., illustrating how much money you did have out in this way, please give us the amount of investment in bonds, and the amount of deposits in correspondent's bank, as an average.

[fol. 109] A. I would say two to three hundred thousand dollars.

Q. What was the customary and usual loan rate?

A. Six per cent.

Q. What is the customary and usual rate of local securities such as local municipal bond issue, local school bond issue, local street bond issue etc.?

A. Five and a half to six per cent on the amount you actually have to pay for them.

Q. Does your bank endeavor, and in such endeavor come in competition with individuals in buying such local securities?

A. Yes, sir.

Q. The statement filed by Mr. Marshall shows that there are in Scott County, a total of $188,280.00 in bonds held by individuals, $1,060,726.00 in secured notes held by individuals and as heretofore stated, $159,111.00 in unsecured notes held by individuals, all in Scott County. Would you say that the competition made as against your bank by such individual holdings was relatively large or small in amount?

A. I would say very large. The amount as shown by the records is a great deal more than the loans of any one bank in the county, and in my opinion, so far as unsecured notes are concerned, the record does not show as given in for taxation, more than thirty to thirty-five per cent of such notes actually held in the county.

Q. With reference to the other banks in the county, state how

your bank compares in regard to amount of loans and discounts, outstanding, and the general size of your bank?

A. Our loans usually run higher than any of the other banks in the county, our capital and surplus are about an average as compared with the other four banks.

Q. How many banks are there in the county?

[fol. 110] A. Five.

Q. Name them please?

A. The First National Bank, Farmers Bank and Trust Company, Georgetown National Bank, Farmers Deposit Bank of Sadieville, and the Citizens bank of Stamping Ground.

Q. All of them are state banks except the Georgetown National Bank and the First National Bank, I take it?

A. Yes, sir.

Q. In the suit of the Georgetown National Bank, you are seeking to enjoin the col-ection of certain tax bills which have been presented to your bank for payment by the Sheriff of Scott County, for the years, 1919, 1920, and 1921, which bills are marked "corrected tax bills." When were these bills first presented to you?

A. Just before the suit was brought to enjoin the collection.

Q. Prior to that time had regular tax bills from Scott County and from the State of Kentucky, been presented to your bank for each of those taxing years, 1919, 1920 and 1921?

A. Yes sir.

Q. When such bill was persented to you by the Sheriff for each of those years, 1919, 1920 and 1921, state whether or not, it was paid by the bank?

A. It was.

Q. Have you your tax receipts for those years showing payment?

A. Yes sir.

Q. I wish you would please file as a part of this suit?

A. Yes, sir.

Q. Are you familiar with the tax rate during the years 1919, 1920 and 1921 and 1922, on such securities in the hands of individuals as stock, bonds secured notes and unsecured notes, accounts [fol. 111] etc?

A. Yes, sir.

Q. What was that rate?

A. Forty cents on the one hundred dollars.

Q. You have stated that the rate on such property as heretofore enumerated, in the hands of individuals, was forty cents on the one hundred dollars, was this the total tax of every kind, city and county and state that such proper- was subjected to?

A. It was.

Q. Now taking the taxing year 1919, what was the total, state and county taxes assessed against your bank shares and sought to be collected against your shares for that year?

A. $1.10 per one hundred dollars.

Q. For the year 1920?

A. $1.10 per one hundred dollars.

Q. For the year 1921?
A. $1.05 per one hundred dollars.
Q. 1922?
A. $1.05 per one hundred dollars.
Q. Referring again to those so called "corrected tax bills" for the years 1919, 1920 and 1921, at what rate for these years, these tax bills are made out against your shares?
A. $1.10 for 1919; $1.10 for 1920; $1.05 for 1921.
Q. And in the new bill you had for 1922 herein enjoined, the rate if $1.05?
A. $1.05.
Q. For these same years 1919, 1920, 1921 and 1922, were not your bank shares subjected to, and if you did not pay, city taxes in addition to the taxes sought to be collected against you?
[fol. 112] A. Yes sir, we did.
Q. At what rate was that tax for those various years?
A. The lowest rate during any of those years was $1.05 and the highest $1.05.
Q. I believe your bank paid that municipal tax in 1920 and 1921, and is seeking to enjoin it in 1922?
A. Yes, sir.

(Signed) George T. Hambirck.

[fol. 113] Witness GEORGE T. HAMBRICK, being recalled for cross-examination, testifies as follows:

Cross-examination.

By H. C. Ford, attorney for defendants:

Q. On page 2 of your direct examination, you said that the amount of unsecured paper, or secured by personal security only, held by your bank of July 1st, 1921, was $806,574.00 and that the amount of real estate mortgage paper was $170.142.60, I will ask you to state in which of those divisions you included paper secured by vendors' liens endorsed to you by the original payee?
A. We classify that under personal surety paper, and it is included in the item of $806,574.00.
Q. In your direct examination you said that money in the hands of individuals comes in competition with the bank by reason of that fact that the individual lender absorbs local high rate paper. I will ask you to designate what you consider local high rate paper that you refer to in that answer?
A. Notes with good personal security, notes secured by collateral such as Government bonds, and other good securities.
Q. Do you consider land notes secured by vendors' liens in that class that you refer to as local high rate paper?
A. Yes, sir.
Q. You also refer to the fact that the individual lender comes into material competition with you by reason of his absorbing local

municipal bond issue, local school bond issue, and paper of the [fol. 114] character. I will ask you to state what local municipal bond issue were absorbed by any individual money lenders in the year 1921?

A. I do not recall any in that particular year, but there have been times when the public has, or when individuals have bought all locals securities.

Q. I will ask you to state when any local municipal bond issues were to your knowledge, purchased by local money lenders, and give every instance of that case in your knowledge?

A. There were same electric light and water bonds, one hundred thousand dollars, they were bid on here by a number of folks but were never purchased by individuals. We bid on them as a bank, one hundred thousand dollar issue was offered, but were never issued. Some suit was brought, and the bonds were never issued. I don't remember the name—Georgetown Water & Light Bonds I suppose. They were bid on but were not purchased by individuals, and by our bank. They were bid on by individuals and by the bank, but for some reason the bonds were withdrawn—were not sold.

Q. I will ask you if it is not true as to these bonds that neither the bank nor individual buyers were the highest bidders, and the bonds were awarded to the highest bidder which was a Chicago concern?

A. I do not remember.

Q. I will ask you if it was not the Harris Trust Company of Chicago the buyer in that case?

A. I know that they purchased school bonds——

Q. Do you remember what year that was in?

A. No sir.

Q. Are you able to say now that local buyers bid more for these [fol. 115] bonds that the bank did?

A. I don't remember the amounts of the various bids.

Q. So you are not able to say that competition of local buyers had anything to do with that sale whatever are you?

A. Yes sir, I think they did.

Q. In what way did the competition of local buyers affect the bank in that case?

A. We had notice that there would be a number of individuals to bid on the bonds, had we not heard that we probably would have made a lower bid for the bank.

Q. Did you not also understand that one-resident bond buyers from the large cities, would also bid on these bonds, and as a matter of fact were they not the buyers who out-bid you?

A. I suppose they were.

Q. In that case the bonds were not awarded to any local buyers, and consequently had no effect one way or the other upon the business of the bank?

A. Yes, sir.

Q. Is that the only case that you have in mind where local buyers participated in any municipal bond issue?

A. I believe there were bids on the sewer bonds by individuals.

Q. Do you know that to be a fact?
A. I would not state positively.
Q. Did your bank bid on the sewer bonds?
A. No sir.
Q. Then even if there were individuals bidding, that did not come into competition with your bank in that case?
A. I guess not.
[fol. 116] Q. These two bonds issues that you refer to took place a number of years ago?
A. Yes, sir.
Q. They were the only two that you designate now where there were any local municipal bond issues in the market?
A. That's all I recall at present.
Q. Was not there an issue of school bonds issued by the municipality last year under competitive bidding?
A. Yes sir.
Q. Did your bank bid on them?
A. Was it last year?
Q. Last year or the year before?
A. No sir, we did not.
Q. Do you know whether any of the local banks bid on them or not?
A. I don't know.
Q. Do you know who purchased them?
A. I think the Harris Trust & Saving Bank of Chicago.
Q. A large part of the secured paper in the local market, is paper secured by vendors' liens, is it not, running from one to an average of three and sometimes five years?
A. Yes sir.
Q. The banks do not seek loans upon that long term as a rule do they prefer short term paper, is that true or not?
A. Yes sir, banks rather prefer shorter term paper.
Q. Have you at any time been unable to secure such of these vendors lien paper that you wanted by reason of the individual competitor preventing you from getting it, if so designate what ones?
[fol. 117] A. I do not remember just when, but I know there have been a number of good loans which the bank would have liked to have had, which individuals had taken up.
Q. Can you designate any such occasion?
A. No sir, I do not know that I can right now.
Q. I will ask you if it is not true that on numerous occasions the bank has not voluntarily assigned to individuals, transferred to individuals, and to other local concerns, such as the Trustees of the Kentucky Baptist Education Society paper of this kind in order to relieve the bank's money from that character of loans?
A. It has been done in some cases, but usually at the solicitation of the individuals, or in the specific case of the Trustees of the Kentucky Baptist Education Society.
Q. Then such transfers have been in co-operation with the bank and with the bank's full consent and willingness, rather than in competition with the bank?

A. It is certainly in the nature of competition in these cases where we have assigned and transferred loans to individuals, or to the College, it was done for the accommodation of these individuals?

Q. You mean to say that the bank would so co-operate with its competitors to its own disadvantage by turning over to its active competitors, loans which it would be a disadvantage to the bank to surrender?

A. It is the business of the bank to accommodate its customers the people to whom these notes are assigned are customers of our bank, and we feel that as an accommodation to them when we are called upon for a note which they would like to invest their money in, we feel that we are in a way duty bound to comply with their request. [fol. 118] Q. Then you feel that in transferring notes and securities to customers, it is more advantage to the bank to accommodate a customer in providing them with investments, than it is for the bank to hold these loans for their own benefit?

A. In many cases it has proven so.

Q. Then banks profit by such transactions rather than reap a disadvantage from it?

A. I will say in this connection that the best customers that we have, have been gained by accommodations of this sort, and their account is worth more to the institution than the amount of interest which we shall get on the notes transferred over to them, consequently the banks consider it the best policy to transfer their securities at times to individual lenders in order to get the benefit of their deposits, and their good will in the banking business.

Q. That is sometimes the case?

A. Yes sir.

Q. These transactions take place as a rule when there is ample demand for the bank to lend its money, and you can find substantially as good investment elsewhere, is that not——

A. Not necessarily.

Q. Do you mean to say that you would surrender good investments for the benefit of a customer, or make a practice of it when you had surplus money on hand that you could not loan on substantially as good securities, and would be without an investment for it——

A. We do not make a practice of this as I stated, but it has been done in a few cases.

Q. Has that practice been in vogue to the extent of largely or materially depriving the bank of any substantial part of its loans [fol. 119] which are considered high class?

A. A great many of these loans have been taken by individuals.

Q. Have you by that been prevented to any material extent from investing your funds at a lawful rate of interest?

A. There have been times when we have been forced to keep large sums with our reserve agents at a lower rate of interest.

Q. State whether or not by reason of your transferring of loans of the bank to individuals to accommodate them, there has ever been any time on that account specifically, the bank has been deprived of a means of investing their funds?

A. No, sir.

Q. You say that there have been times when the bank has had a large surplus of money which you had to deposit with your correspondents. At what time of the year as a rule does that take place?

A. From January to April I should say.

Q. That is the time of the year where there are large cash returns coming into this community on account of the sales of tobacco, is that not true?

A. Yes, sir.

Q. And as a rule that cash surplus is needed by the bank for the purposes of carrying customers from April on along the rest of the year, and you deposit that in your correspondents banks for the purpose of having it available on short notice when the summer demand arises in the banking business, is that true or not?

A. Yes sir, because we are not able to loan it at that time.

Q. Now that surplus which comes in between January and April is as a rule taken up and can be taken up by demands of the bank's [fol. 120] customers from April on to the remainder of the year, is that true?

A. Usually is, yes sir.

Q. And as a rule in addition to that surplus which you accumulate from April to January, the banks and your bank in particular has to rediscount and borrow money in other ways from April throughout the remainder of the year is that true or not?

A. We do, but I will add that the bank considers it good business to borrow and loan, since we usually borrow at from 1¼ to 1½ per cent less than they loan their funds for.

Q. Then according to your own statement, practically the only time of the year when the bank's demands do not equal the bank's surplus, is from April to January?

A. We have a larger surplus at that time.

Q. What interest do you get on surplus placed on deposit with your correspondent banks?

A. An average of about two and one-half per cent.

Q. Why is it that you place that surplus on deposit with correspondent banks at the rate of 2½ per cent rather than invest it in Government bonds, or other securities, that will yield from four to four and one-half per cent. Is it not for the purpose of having it available on call on short notice when you need it?

A. Yes, sir, to some extent that is true.

Q. Then it would not be and has not been the policy of the bank to seek for an investment of that surplus arising from April to Jan- [fol. 121] uary, temporary surplus, it has not been the policy of the bank to seek vendor's lien, or any other paper running for longer terms, is that true, by reason of the fact if you invest that surplus in that kind of paper it would not be available for you when you need it?

A. We do not seek long investments, but at the same time we are perfectly willing to make loans when we have a demand.

Q. Would you as a banker, invest that surplus which arises in

your business January and April, in land notes running from one to three years, if they were available during that time, rather than put that money on deposit, and have it for your short time loans the remainder of the year, to accommodate your customers?

A. No sir, I do not think it would be good business to do it.

Q. It therefore follows that the surplus that you have referred to as the surplus which is not available under good banking investment for investment in local high rate vendor's lien securities, but is a surplus that the bank must hold ready to meet business demands of its customers arising between April and the remainder of the year?

A. The bank does not necessarily have to hold this as a reserve to meet the demands of the rest of the year, if the bank had a demand for this surplus at this particular time from parties whose paper was well secured, they would certainly not hesitate to loan it, for under the present federal reserve system, banks can loan their funds closer than in the old days, and at the same time make money by so doing when the difference in the rate of money charged by the Federal Reserve Bank, and the rate paid to the lending bank is considerd.

Q. That may be true provided you could loan it on short term [fol. 122] paper, but you have just stated that you would not consider it good banking business to loan that surplus on long term vendor's paper, if you did it would necessitate rediscounting that paper at a loss to have the funds available at the time the bank needed it, is that or not true?

A. No sir, nor rediscounting at a loss——

Q. I mean rediscounting it so that you would not get the entire amount rather than a part of it. By having to rediscount paper to get funds to loan customers, you are simply borrowing money in order to have money to loan, are you not?

A. Exactly and borrowing it at about 4¼% and lending at 6%.

Q. With a profit to you of only about 1½% while if you had not made that loan so as to have to borrow you would have been getting a profit on your funds of six per cent, is that true?

A. No sir.

Q. You mean you can borrow money at 4½% by rediscounting your paper and realize more profit than you can using your own money on short time loans?

A. I did not propose to say that; I did not say that sir.

Q. To come down to the facts of this case, is it not true that this surplus that arises between April and January, you do not seek to loan on long time paper because it would not be good banking business?

A. Not to loan——

Q. And you would not want to loan it?

A. On three or five years, no sir. But I would like to add that the loans in the hands of individuals are not all long time loans running from three to five years, but a great many loans from six to twelve [fol. 123] months are held by individuals.

Q. But a great part of vendors paper does run, one, two and three years and sometimes longer, does it not?

A. Yes sir.

A. And that constitutes a large part of the secured paper referred to in the assessment held in banks, a majority of it?

A. No sir, not a majority of it.

Q. Have you examined the paper to see what part is long term vendors paper, and what is not?

A. Do you mean of my own statement.

Q. No, the statement of Ben Marshall.

A. No sir, I am only basing it on figures of my own bank.

Q. During that period when your surplus arises between April and January, there is not as much demand for lending in this community, that is short term paper especially, as there is later in the year by reason of the fact that the farmers, or rather most of them have plenty of money, is that true?

A. Yes, sir.

Q. There are a very few loans made by either individuals or banks during that period, except such loans as arise about the first of March on vendors lien paper, is that true?

A. Yes, sir, that is the largest demand comes around the first of March.

Q. I will ask you to state from your records, if you can, how much money your bank borrowed during the year 1921, to meet the demands of the lending market here, and your customers?

A. About $225,000.00.

[fol. 124] Q. At what time of that year did you have that much money borrowed?

A. I think in that particular year, it was January. This was the year that the tobacco crop was unsold at this time which accounts for our heavy borrowing.

Q. How much money did you have borrowed on the first of July, 1921?

A. $54,485.00.

Q. What is the limit if any of amount that your bank can borrow for this purpose under the law?

A. Direct or rediscount.

Q. In either way, borrowing direct and re-discount and paper in both ways?

A. There is no limit on the re-discount as long as you have good paper.

Q. How much can you borrow direct?

A. $75,000.00.

Q. The bank had had to borrow money practically every year at certain periods of the year to meet the demands of the business, is that true?

A. Yes sir, we have for a number of years?

Q. Then notwithstanding this enormous competition of individual owners which you have testified to, the bank has thruout every year, found satisfactory loans to the extent of their resources, and often in excess of their resources which necessi-ated borrowing and re-discounting to meet the demands?

A. Yes, sir, I will add that banks feel freer to make loans under [fol. 125] the present system than they did when it was hard to borrow money.

Redirect examination.

By J. Craig Bradley, Attorney for plaintiff:

Q. You were asked about your borrowing in 1921, what amount of surplus as indicated by the amounts you had on deposit in your correspondent bank, and the amount you had invested in Government securities did you have in 1921?

A. About $200,000.00.

Q. What was the average amount that you had borrowed that year?

A. During the year?

Q. Yes.

A. I should say seventy-five thousand dollars ($75,000.00).

Q. You state that this big surplus running from January to April, or May, you were asked if it was not necessary to keep this on hand. I call your attention to the question that he *sa*ked in regard to whether you could make more money by rediscounting than you could by loaning your own money, now with reference to these various questions, I will put this one to you. What per cent do you get on your funds in case you left them during all that time in your correspondent banks?

A. Two and a half.

Q. Now in case you lend them on mortgage paper, or individual [fol. 126] notes, or any paper that you can re-discount, what is your rate of interest?

A. Six per cent.

Q. Now supposing these funds are on deposit in your correspondent banks, when you drew them out to meet emergency, you can loan them at six per cent, isn't that true?

A. Yes sir.

Q. And in case this six per cent paper has been taken up by individuals you have to leave the money in your correspondent banks in case there is no demand for this six per cent paper, is this true or not?

A. Yes sir.

Q. You were asked the question as to accom-odation given your customers, I will ask you to explain how if it is a fact, that it affects your bank in regard to lowering your resources and also lowers your amount of loans you are able to *am*ke?

A. It undoubtedly acts both ways. When a note is transferred to a customer, this money is withdrawn from deposit in bank, besides the bank loses the interest on the note from that date.

Q. On the other hand if you did not make the loan to him, he would withdraw the money and get the loan somewhere else?

A. Very likely—has been done ofter.

Q. You were asked if during the times that you had this surplus on hand, it was not always the period when farmers and the borrowing public generally, had more money on hand, I will ask you if it is not also true that competition during that period is not much

[fol. 127] greater on account of the fact that the individual investor has more money to invest in what loans are available?

A. I think that is true.

Q. You were asked in regard to the local bond issues when bonds were originally put out, and asked to give individual instances, I will ask you if your statement in regard to this competition is not based simply on the figures as shown by the assessment returns, that a large amount of notes are held by individuals and a large amount of bonds are held by individuals, but in spite of the fact that you may not know of indiv-ual instances when you missed these particular loans, you have missed them from the fact that they are owned by individuals, is that correct?

A. Yes sir.

Q. In other words, you mean by reason of the fact that these bonds, notes, etc., are held by individuals, to that extent the poser of your bank to invest in that type of securities is lessened?

A. Yes sir.

Q. You were asked to enumerate various kinds of what you call local high rate paper, you named individual security, and then simply personal notes without security and collateral notes, then you were asked if you did not include vendors' liens, you said you did, I will ask you if that does not include mortgage notes on real estate too?

A. Yes sir.

Q. Is it not a fact that your bank as a National Bank, would prefer vendors' lien notes, to mortgage notes on account of the fact that it [fol. 128] is two named paper, and you consider it personal security?

A. Yes sir.

Q. On the other hand you were asked as to the percentage of vendors' lien as compared with straight mortgage in your bank, do you not find that mortgage paper far exceeds the amount of vendors' lien paper you are called upon to handle.

A. Yes sir, it does.

Q. In spite of the fact that you would prefer the other paper if you could get hold of it?

A. Yes sir.

Q. You were asked as to the length of time, paper was mentioned as three to five years, I will ask you what percentage of paper is ever presented to your bank that is over three years in time of payment?

A. A very, very small per cent.

Q. Is it even as much as one per cent in your opinion, of the paper you handle?

A. I should say not.

Q. Is it not a fact that a great majority of the paper presented, I do not mean such as you actually handle, but a great majority presented to you for handling, is not six, twelve, eighteen and twenty-four months?

A. Yes sir, that is about the usual length of time.

Q. Is not a great majority of it six and twelve months paper?
A. Yes sir.
Q. You were asked in regard to the amount of borrowing, and you stated that in your opinion it was good banking and was the [fol. 129] policy followed by your bank, to loan up to your full capacity at any time that you had the surplus, and then re-discount to again loan at six per cent. Does your bank follow that as a policy of the bank?
A. Yes sir.
Q. The question was put to you as if you sold these notes that you spoke of as re-discount, I will ask you if it is not a fact that you simply put these notes up as collateral, that you still get six per cent on these notes as collarteral, borrow money on them at 4½ per cent, and then make six per cent again on the money that you borrow and re-loan?
A. That's the way it operates, yes sir.
Q. So to the extent that you do re-discount and borrow you simply make an addition 1½ per cent on whatever amount you borrow in addition to the six per cent you are getting on your collateral if you put it up?
A. Exactly.

Recross-examination.

By H. Church Ford, attorney for defendants:

Q. I understood you to say that the limit of money you could borrow was $75,000.00?
A. Yes sir borrow direct.
Q. And during the year 1921 your average borrowing was $75,000.00——
A. We distinguished between borrowing and re-discounting there is no limit to our re-discounting.
[fol. 130] Q. During the year 1921, your average was $75,000.00?
A. Yes sir.
Q. As we have taken 1921 as a typical year and the assessment list of property owned by individuals during 1921 has been filed as being typical of the other years, I will ask you to state whether or not you know that any of the liens shown to be held by individuals which are unsecured notes totaling $159,111.00 was paper under twelve months' term. Do you know anything about these unsecured papers held by individuals?
A. I do not know the time, but as a rule——
Q. I am asking as to this specifically. Are you able to state that any of this unsecured paper assessed here as of July 1st, 1921, is paper that would be desirable to the bank, and that the bank would have loaned, if so point out what it was?
A. Judging from the character of men who made these loans——
Q. You can't tell who made them?
A. I mean who made the loans, the men who furnished the money, being good conservative business men, I would say these loans would be desirable bank loans.

Q. That would depend entirely on whether they were maturing within a reasonable time, and whether they bore a reasonable amount of interest, and whether made to persons who are good, would it not?

A. All these things would have to be considered, but as a rule that class of loans is made for not more than twelve months.

[fol. 131] Q. You absolutely have no knowledge of thes loans listed here for taxation as to terms, amount of interest, and whose name is on the paper?

A. I have—some of them.

Q. I will ask you to tell which you know——

A. B. F. Bridges, three thousand dollars ($3,000.00)——

Q. State whose names are on the paper, the terms of the paper and what interest they bear, and when the loan was made if you know?

A. I can't tell when it was made, Watson to Bridges—I do not know when it was made, or for how long, it would be hard to designate in detail. I will not attempt to give a list of these in detail. I thought this was a list of the makers of the notes, but find it is a list of the holdres only, and I cannot give you any information.

Q. Therefore you cannot testify under oath as to the character, terms, maturity date, or any of the features which determine the desirability of any of these notes listed in Mr. Marshall's report of the notes taxed as being in the hands of individuals?

A. No sir.

Q. Consequently you cannot say now positively, that any of these notes are such character of notes and securities as the bank would seek to loan their money on by reason of not knowing definitely the terms, makers, or any other facts with reference to these notes?

[fol. 132] A. I only have good reasons for believing that these notes are——

Q. I don't want your belief.

A. I have seen a number of these notes which have been given to individuals and as a rule these notes are given for a period of twelve months or less.

Q. I did not ask you about notes of individuals that you have seen, I am asking you specifically about the unsecured paper that is listed as of July 1st, 1921, in the hands of individuals by reason of the fact that that year by agreement of the parties was taken as typical of all these years. I ask you if you know the names of the makers, terms of the note, and the amount of interest they bear on any of these notes?

A. I do not.

Q. Consequently before you can state whether or not they would be desirable bank paper, you would have to know these facts, would you not?

A. I would.

Q. And not knowing these facts you are unable to say that any of them is desirable banking paper as a positive statement of fact?

A. Judging from the business ability of the lenders on the list, I have before me, I think any bank would do well to — up any

of the notes held by individuals on their judgment as to the character of the loans.

[fol. 133] Q. You continually evade answering my question. You have stated that your bank will not take paper until you can form some judgment as to its desirability based upon your knowledge of the men making them, the time of maturity, and the amount of interest it is to bear——

A. That is true.

Q. You have stated that you do not know these facts with reference to any of these notes listed in this assessment blank——

A. Yes sir.

Q. Without that knowledge you cannot state positively that they are bankable paper, can you——

Objection made by J. C. Bradley, plaintiff's attorney:

Mr. Bradley: The gentleman has said that he did not know as to any individual note, but that his knowledge of the notes loaned is such that he knows that they would be, a great majority of them would be valuable for bank paper, and he has repeatedly answered it that way?

Q. I will ask you to examine the securities listed with Mr. Marshall's statement, and point out if any, any of these securities to your knowledge, which could have been secured by the bank, at the time you had a surplus on hand between January and April 1921, had it not been for the individual owners having them?

Objection made by Mr. J. C. Bradley.

[fol. 134] Mr. Bradley: It is absolutely impossible for the gentleman to pick out individual instances and I object to testimony seeking to confine him to individual notes, and individual instances. It is simply a question of general compe-tion as indicated by the amount of notes held by the bank, and the amount of notes held by individuals.

The witness is not attempting to say that he has any particular knowledge of any indiv-ual note, and it would be impossible for him to make a definite statement with reference to that.

Q. Your examination in chief includes the statement that individuals buy bonds, thus depriving the banks of procuring these bonds, I will ask you if it is not true that at all times during 1921, the general bond market was such that you could buy bonds at any time, Government bonds, good securities of various kinds, industrial securities, without difficulity if you had desired them?

A. Yes sir, there are always plenty of bonds on the market every year.

Q. In fact there are a great many good industrial securities available that bear a higher rate of interest than six per cent?

A. Not so many that would be considered absolutely good for a bank to invest in.

Q. I will ask you to state if any, what bonds or what character of

bonds the bank was prevented from buying by reason of any individuals buying these bonds in competition with the bank?

[fol. 135] A. I do — recall any special kind of bonds, but the fact that these bonds were taken up by individuals, the money was withdrawn from the bank and placed in these bonds. Whereas had it not been for the bonds the money would have remained on deposit in the bank.

Q. Then you are not able to state that any single bond or bonds listed by individuals in this assessment list, were bonds that were desirable bank investments?

A. I cannot say whether they were or not.

Q. I will ask you if it is not true that practically every sale of land that takes place in this country, gives rise to vendor's lien notes, almost universally running from one, two and three years if not longer?

A. Yes sir, that is usually the case, that is the average time.

Q. Are you able to rediscount with the Federal Bank, paper running three years, or do you have to borrow money on that direct?

A. Borrow it direct.

Q. Consequently that would be, paper of that kind would come within your limitation of seventy-five hundred dollars?

A. Yes sir.

Q. Your rediscount with the Federal Bank is limited to what character of paper, maturing within what time?

A. Commercial paper maturing within ninety days, that was the ruling at that time, agriculture and live stock-paper maturing [fol. 136] within six, that also was the ruling at that time. All of these rediscounts have been changed to longer period since 1921.

Q. What difference has been made, what longer periods have been given?

A. Four months for commercial paper, nine months for agriculture and live stock paper.

Q. Then if I understand you your rediscounts with the Federal Bank is limited to such paper as matures within nine months then and now?

A. Yes sir, but the Federal Reserve grants renewals on these notes.

Redirect examination.

By Mr. J. Craig Bradley, plaintiff's attorney:

Q. On that last question as to maturity that at times enables you to use twelve months paper, provided the paper you take up matures within nine months?

A. It is figured on the time that the paper has to run from the date of the rediscount, and not on the time that the paper had originally to run.

Q. You were asked as to your knowledge as to which of these individual notes, notes held by individuals, I will ask you if during all the period covered by these suits, of four years, it had not been your

custom to frequently attend to individual transactions between borrowers of your bank, loans made by individuals, that you actually saw the notes?

[fol. 137] A. I have a great many of them.

Q. Altho you may not be able to give individual instances, I will ask you if from your knowledge generally of the class of loans held by individuals such knowledge as you have obtained, from notes that have passed thro- your hands, as to what class of paper these individual notes are, whether they are bankable paper or not?

A. They are usually bankable paper.

Q. You were asked if any of these bonds were bankable bonds, you have already stated that the general competition from this source was by drawing money out of your bank, but on the other hand I will ask you if in the case of individual depositors, is it not your custom in a great majority of instances to advise them as to what bonds to take—as to what bonds to buy, and if you do not in a great majority, of cases actually invest in the bonds for them?

A. Ye- sir, we very often do that.

Q. These bonds that you do advise, are the*h* such bonds as the bank could carry?

A. Ye- sir.

Q. And high grade bonds?

A. Yes sir.

Question by Mr. H. C. Ford:

Q. If the bank can buy these bonds for individuals they could buy them for themselves if they wanted to?

A. Yes sir.

[fol. 138] Question by Mr. J. B. Finnell, attorney for defendants:

Q. You have stated that from your general knowledge of the names of those who made the loans in the year 1921, and from the fact that in some cases you had some connection with the loan, possibly made at your bank, that you consider a large number of these loans made in that way desirable banking loans, is that correct?

A. With the exception of the fact that the lender was assisted by the bank in making them, the rest of the statement is al- right.

Q. Do you know of any loans contained in that list, that were made during the year 1921, or have you any approximate idea of the amount of loans made at your bank, bank officials assisting in the year 1921?

A. No sir.

Q. Therefore what you have testified to in regard to their desirability by the bank, you have arrived at thru your experience along that line for a number of years, not confined to the year 1921?

A. Ye- sir, for a number of years including 1921.

Q. I will ask you if it is true that your bank has during the year 1921, or has ever, or would now take any one of these unsecured notes simply and wholly for the reason that that note had been

loaned by any one certain individual, that the money for that note had been loaned by any one certain individual?
[fol. 139] A. No sir.

(Signed) Geo. T. Hambrick.

Also the deposition of W. A. HINTON, taken at the same time and place and for the same purpose.

Witness, after being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. Give your full name, age and occupation?
A. W. A. Hinton, age fifty-one, Cashier Farmers Deposit Bank of Sadieville.
Q. Where is your bank located?
A. Sadieville, Scott County, Kentucky.
Q. Is yours the only bank in that town?
A. Yes sir.
Q. Have you a statement of your bank as of July 1st, 1921.
A. I have of June 30th. Ye- sir.
Q. I wish you would file that with your deposition?
A. Yes sir.
Q. I notice that your total loans and discounts are $423,402.14, will you state now just how these loans are totaled, how much secured by real estate mortgage, and how much unsecured, except by personal security?
[fol. 140] A. Secured by real estate mortgage $220,020.00. Secured by personal securities, and other securities, $203,382.14.
Q. How long have you been engaged in the banking business in Scott County?
A. Since 1901.
Q. From your knowledge of bank conditions, and general money conditions in your neighborhood, do you consider that the individual investor in secured notes and unsecured notes, bonds etc., comes into competition with your bank shares, and with the conduct of the business of your bank in that community?
A. Yes sir.
Q. Do you consider that that competition on the part of individuals in your community is relatively large or small in amount?
A. Large.
Q. From your knowledge of conditions there are investments of this kind made by individuals, would you say that this competition was substantially the same as if there were another bank operating in your community?
A. Yes sir, almost the same.

Signature waived.

[fol. 141] Also the deposition of W. G. ABBOTT, taken at the same time and place and for the same purpose.

Witness, after being first duly sworn according to law, deposes and says as follows:

Direct examination

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. Give your full name, age and occupation, please?

A. William G. Abbott, Cashier, First National Bank, Georgetown, Kentucky.

Q. How long have you been cashier of the First National Bank?

A. Thirty-four years.

Q. Have you a statement of your bank as of date July 1st 1921?

A. Yes sir.

Q. I will ask you to file it with your deposition?

A. Yes sir.

Q. Is it not true that on one of the forms sent you by the State Tax Commission for assessment purposes for each year you are required to put a valuation on your bank shares?

A. Yes sir we are.

Q. Did you fill out such a form for the assessing date, July 1st, 1921?

A. I did.

Q. Do you recall the valuation placed on your bank shares in that report?

A. Yes sir, it was eighty-five per cent of the capital, surplus and [fol. 142] undivided profits.

Q. When you went to pay your taxes, did you or not find that there had been a raise in this assessment?

A. Yes sir.

Q. About what per cent of your total or capital, surplus and undivided profits had the valuation been raised?

A. To about one hundred per cent.

Q. Did you or your bank receive any notice of any kind from the State Tax Commission of any such raise in the valuation placed in your bank shares?

A. Did not.

Q. Did the county assessing officers *five* you or your bank any notice of any kind of any such raise?

A. No sir.

Q. When the Board of Supervisors for the County of Scott met, did you receive any notice from them of any such raise on your bank shares, or any raise of your bank shares?

A. No sir, we did not.

Q. Have you before you a statement of the total of the loans and discounts of your bank for the year as of July 1st, 1921?

A. Yes sir, I have.

Q. What was the total?

A. Total loans and discounts $548,144.91.

Q. How were these divided as to how much was represented by notes secured by real estate mortgage, and how much unsecured or personal security only?

[fol. 143] A. Notes secured by mortgage on real estate $78,691.63. Secured by stocks and bonds, $17,265.14. Personal Security $446,-788.14.

Q. On that date how much did you have invested in bonds and other securities, other than notes?

A. $92,563.52.

Q. And on deposit with your corresponding banks?

A. $75,466.54.

Q. I call your attention to the list filed with the deposition of Ben Marshall, herein, which shows that there were given in for taxation as of July 1st, 1921, unsecured notes in the hands of individuals amounting to about $159,000.00. What percentage in your opinion, of unsecured notes actually held by individuals in the County of Scott, on that date, would you say that that represented?

A. I would not think more than one fourth of it.

Q. On what do you base that estimate?

A. On my general knowledge of what goes out thru my bank as the proportionate part of the total in so far as money is checked out by individuals for loans to individuals, and on my general knowledge of the amount of money in the hands of individuals, and the extent to which individuals are engaged in the loaning business in this county.

Q. From your knowledge of the extent to which individuals loan money in this county, either on secured or unsecured paper, and your knowledge of the extent to which they buy local securities, such as local street, municipal, County bonds, and other bonds, do [fol. 144] you consider that the individual investor in these forms of security comes into competition with your bank shares, and with the conduct of your banking business?

A. It certainly does.

Q. Do you consider that such competition furnished by individuals as relatively large of small in amount?

A. Large.

Q. In your banking business, have you not had experience of a depositor taking money out of your bank for the purpose of taking up desirable loans held by your bank?

A. Yes sir, I have.

Q. State whether or not that experience is frequent or the reverse?

A. Rather frequent. I have known it to happen very often.

Q. Now in the face of competition which has been noted by one of the other bankers, I will call your attention, and ask if it has come in your experience also, that is by individual investors absorbing a large — of the high interest local paper, and local securities, and forcing your money to be invested in lower rates of interest, or forcing it to remain on deposit at a very much lower rate of interest. Is that true, or not in your experience?

A. It is true, has been true in our bank.

Q. Since the tax rate on securities such as I have enumerated in the hands of individuals has been lowered to a total of forty cents [fol. 145] for all purposes, state whether or not you have noticed an increase in individuals to engage in the business of loaning money and purchasing securities?

A. Yes sir, there is an increase in it.

Q. Do you consider that that increase is a direct result of the lower tax rate on securities?

A. Yes sir.

Q. What other effect does that have in making compe-tion with your bank shares and banking business, besides lessening the amount of local paper for the investment of your funds?

A. I will answer that by saying that very frenquently money is withdrawn from our bank, lessening the deposits in our bank, with which to make these loans. Formerly people were satisfied to keep their money in the bank rather than pay the high rate of taxation on investments. We are frenquently importuned by our customers to get investments for them, invest in good note- of the very kind we are trying to make for our bank.

(Signed) W. G. Abbott.

[fol. 145½] Also the deposition of W. G. Abbott, taken at the same time and place and for the same purpose, taken on cross-examination.

Cross-examination.

By Mr. H. Church Ford, attorney for defendant:

Q. What amount of money did the First National Bank of which you are Cahsier, have borrowed during the year 1921?

A. The average amount during the year?

Q. Yes.

A. Average bills payable, money borrowed directly, $51,900.00 on re-discounts $6,630.00 in round numbers.

Q. What is the total amount that your bank can borrow under its resources, borrow directly?

A. The amount of capital stock——

Q. How much is that?

A. $50,000.00.

Q. So the average amount that you had borrowed during the year equaled the total borrowing ability of the bank?

A. It was run over thru the year 1921, most of it had been borrowed the previous fall.

(Signed) W. G. Abbott.

[fol. 146] Also the deposition of C. B. ROBERTS, taken at the same time and place for the same purpose.

Witness, after being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. You are the Cashier of the Citizens Bank of Stamping Ground?
A. Yes I am.
Q. What is your full name.
A. Clark B. Roberts.
Q. How long have you been cashier of this bank?
A. Since 1900.
Q. Have you a statement of your bank as of July 1st 1921?
A. Yes sir I will file it.
Q. I wish you would in making out this statement and filing it show the total loans and discounts and divide the loans and discounts up into those secured by mortgage on real estate, those secured by collateral, those unsecured or secured only by personal surety. Also let your statement show the amount of bonds and securities of that kind held by your bank, and the amount of your deposits in your corresponding banks as of the same date?
[fol. 147] A. Yes sir.
Q. From your knowledge of money conditions in your community, and of money loaned by individuals generally in your community state whether or not individuals making loans on unsecured notes or on notes secured by mortgage, or local securities or other kinds, in your opinion come into competition with your bank shares and with the conduct of the business of your bank?
A. Yes sir, very much so.
Q. In your opinion is this competition material or otherwise?
A. Yes sir, it is very material.
Q. Where is your bank located?
A. Stamping Ground, Scott County, Kentucky.
Q. Is there any other bank in your immediate community?
A. No sir.
Q. Suppose there were another bank located in your community of substantially the same size as yours, and individual competition were eliminated, do you think there would be any difference in the competition between such a bank and the individual competition as it now exists?
A. I do not think there would be any.
Q. If individual competition were eliminated in making such loans what effect do you think it would have on the earning capacity of your bank, and on the amount of dividend that you would be [fol. 148] able to pay on your bank shares?
A. Suppose we were paying a six per cent dividend, I think it would increase the dividend to at least ten per cent.

Signature waived.

The taking of the depositions is here adjourned until the morning at eight-thirty, at the same place.

The deposition of J. C. NICHOLS, taken, pursuant to adjournment, on the 29th day of September, 1923, at the law offices of Bradley and Bradley, to be read as evidence in plaintiff's behalf on the trial of the above-styled action.

Witness, after being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. Give your full name, age and occupation?

A. John C. Nichols, Thirty-eight years, Cashier, Farmers Bank and Trust Company, Georgetown, Kentucky.

Q. How long have you been cashier of this bank, and how long in the banking business generally?

[fol. 149] Cashier since October 1st 1919, been connected with the same institution and in the banking business since March 4th, 1907.

Q. You were then Cashier on July 1st, 1921?

A. I was.

Q. Will you please file a statement of your bank as of that date?

A. I will get that.

Q. What is the total of your loans and discounts as of that date?

A. Total loans and discounts $720,708.03.

Q. How were they divided under the following heads: Loans secured by mortgage on real estate?

A. $348,463.68.

Q. Loans secured by collateral?

A. $89,973.43.

Q. Unsecured loans, or personal surety only?

A. $288,270.92.

Q. What was the amount of bonds and other securities held by your bank as of that date?

A. Total bonds and warrants and other bonds, $200,558.41.

Q. Total on hand in corresponding banks?

A. $67,751.59.

Q. The statement filed with the deposition of Ben Marshall shows that the total of unsecured notes held by individuals and given in for taxation in the County of Scott were $159,000.00 as of July [fol. 150] 1st, 1921. From your knowledge of general money conditions here in the county, your knowledge of money in the hands of individuals, and the extent to which individuals engage in the loan business, what per centage in your opinion does this $159,000.00 represent of the total of unsecured notes actually owned by individuals on that date?

A. I would say from thirty to forty per cent.

Q. If you can in detail, give the facts on which you base this opinion?

A. From time to time in consultation with customers, and in confidential relations they reveal to us notes that they hold against various individuals, and while no actual information can be obtained upon the total amounts, it is my best judgment, the total of notes listed would not exceed that *is* for taxation, would not exceed forty per cent, and would be nearer thirty.

Q. Taking that list as filed with the deposition of Ben Marshall, which shows something over one million dollars in the hands of individual owners in notes secured by mortgage, $188,000.00 owned by individuals in bonds, and your own knowledge as to the extent of unsecured notes held by individuals, do you consider that the individual dealing in bonds, secured and unsecured notes in Scott County, come into competition with your bank shares, and with your banking business?

[fol. 151] A. My opinion is that it does create competition, and serious competition as evidenced by the total amount as shown by Mr. Marshall's statement which is $1,408,000.00 of bonds, and secured and unsecured notes. This amount is considerable in excess of the loans of any bank, National or state, in this county, and is also a larger amount than the investments of some two or possibly three of the smaller banks in our county. Particularly is this true concerning mortgage paper in which our bank is a considerable purchaser, and in many instances the lender of this money obtains the best and more marketable mortgage paper. This money in many instances, has been withdrawn from deposit in the Farmers Bank & Trust Company, and loaned to individuals, who in turn pays off the loan to us.

Q. Since you have started the matter of competition, please state in what other ways, in your opinion, this individuals dealing in such paper and bonds in Scott County, does come into competition with your bank shares, and with your banking business generally?

A. In one way it prevents us from buying many mortgage loans, and in withdrawing money of the customer from the bank, thereby in two ways reducing the earnings of the bank. Again customers do business with a bank thru one or two ways, either by reason of knowing someone intimately connected with the bank, or by the existence of loans and favors granted them. Usually an individual [fol. 152] who has obtained a loan from a bank becomes a customer of that bank, there by becoming an asset of the bank and a real friend. Becoming a customer in many instances becomes a saver. Thru taking up these choice loans by the individual the bank is hindered considerably in its influence in a neighborhood thru loaning its money, making its earnings and benefiting that community. Also by the individual absorbing these select investments, the bank is forced to invest surplus funds in investments yielding a lower rate of interest, such investments, as United States Bonds and Treasury's notes, which yield from four to four and a half per cent per annum,

state, county and city warrants, and other high class bonds. This lower rate means a reduction of earnings to said bank. In some instances we have learned and seen loans that have been made to our customers by individuals at a lower rate of interest than we charged, thereby having our loan paid off, and our earnings decreased. Again these amount of loans, as shown by Mr. Marshall's report, totaling one million, four hundred and eight thousand dollars, yield a county tax of only forty cents on the one hundred dollars, with no overhead or expense borne by the individual lender, whereas in the case of the Farmers Bank and Trust Company, its tax rate for 1921 on its bank shares was $2.70 per one hundred dollars. [fol. 153] This $2.70 rate covers $1.05 county and state and $1.65 municipal. To maintain an institution of our size, paying its employees, its taxes, and general expenses, we find that the amount expended for same 1921 was $30,213.45. There figures are only one of the five banks in this county, with general expenses of the bank to pay and to meet competition as evidenced by the loans in the hands of individual lenders.

Q. The statute by which individual holdings of paper such as we have enumerated, was exempted from local taxation and subjected to a tax of only forty cents per one hundred dollars was past in 1918. What effect if any on the amount of money invested by individuals in Scott County in such securities as we have enumerated did this exemption from local taxation have?

A. It has caused considerable increase in the number and amount of loans in the hands of individual lenders, and competing in the same class of paper with the local market supplies thereby increasing the seriousness of the competition in our line of business.

Q. I show you a blank which is marked No. 14-A, filed with the deposition of Ben Marshall, which purports to be a copy of a report filed by the Georgetown National Bank and ask you if your bank filed a similar report in 1921 as of July 1st?

[fol. 154] A. We did.

Q. I notice the line "bank shares" in which you were by said bank required to put a valuation on your bank shares. How did you value your bank shares in that year?

A. Eighty-five per cent of the total capital, surplus and undivided profits.

Q. When you went to pay your taxes for that year, had that valuation placed on the shares by you been raised?

A. It had.

Q. To what per cent of such capital, surplus and undivided profits had it been raised?

A. One hundred per cent.

Q. Do you know by whom it had been raised—did you receive any notice of any such raise from the tax officials at Frankfort?

A. I did not.

Q. From the local assessing officers of Scott County?

A. I did not.

Q. From the Board of Supervisors in Scott County?

A. Did not.

Q. Did you have any notice in any manner whatsoever of such raise from any source, before you went to pay your taxes?

A. Did not.

Q. In this suit there is an attempt to collect certain taxes for the year 1919, 1920 and 1921, when was these tax bills marked "corrected tax bills", presented to you for payment.

[fol. 155] A. Just pior to the filing of this suit to enjoin their collection.

Q. Taking each year—in 1919 was a tax bill presented to you by the Sheriff in regular form on your bank shares, and real estate for that year?

A. It was and paid upon its due date.

Q. In the year 1920 was a tax bill in regular form presented to your bank and paid to the Sheriff of Scott County?

A. It was.

Q. Did the same happen in 1921?

A. It did.

Q. During these years was any further tax bills presented to you, or any further demand for taxes made upon your bank in any way at all?

A. No sir, none whatever.

Q. Have you these tax receipts that you paid for these years?

A. Yes sir.

Q. Please file them?

A. I will.

Q. Now going back to the matter of competition, I would ask you to compare and state just what business your bank is in and then the business that these individuals are in, in order to show just how the two businesses compare.

A. Our bank makes mortgage loans in this community, the individual lender does the same. The bank loans money on collateral and the lending individual does the same. The bank loans its [fol. 156] funds on high class, one named personal security notes, state and county warrants, the individual lender does the same. From the rapid increase of loans in the hands of the individual lenders, and the severe competition created thereby, and the difference in tax rates, and over-head expenses borne by the bank, it has become a real menace to the banking interest, and is limited only by the amount of money loaned by the individual before the bank is seriously handicapped in its line of business and influence in the community.

Also J. C. Nichols, being recalled for cross-examination, testifies as follows:

Cross-examination:

Q. Mr. Nichols in your examination in chief, you asserted that one character of security in the hands of individual owners which

came in competition with the banks, are bonds, and Mr. Marshall has listed with his deposition a number of these bonds held by private individuals as of July 1st, 1921 in this county. The total of which is $188,280.00, of these $181,000.00, are reported as held by W. Z. Thompson do you know him?

A. Yes sir, I am acquainted with him.

[fol. 157] Q. Is he a customer of your bank?

A. Yes sir.

Q. Is it not true from your knowledge or information that these bonds of Mr. Thompson are municipal bonds and securities on Florida municipal property—Miami property?

A. My information is they are not municipal bonds?

Q. What character of bonds are they?

A. They are real estate bonds, mortgage bonds issued upon real estate owned by individuals and corporations.

Q. In the state of Florida?

A. Yes sir, I have never seen any of the bonds.

Q. Assuming that your information is true you would not presume to say that investment of $181,000.00 in Florida bonds secured by real estate in Florida, comes in competition with any of your investments?

A. No sir, other than this money might be on deposit with us, and be withdrawn thereby causing a loss of earnings.

Q. Might be withdrawn for any purpose so far as that is concerned? Consequently we eliminate $181,000.00 of the bonds listed here as of July 1st, 1921, what per cent of the bank's capital and deposits is required by law to be kept in reserve unloaned ready for call at any time—what per cent of your assets, allowing seven per cent upon your demand deposits and three per cent on time deposits?

[fol. 158] You are required by law to keep on reserve and uninvested seven per cent of your demand deposits, and three of your time deposits.

Q. On July 1st 1921, what was the amount of your demand deposits, do you know?

A. No sir, I have not that with me.

Q. Can you give approximately?

A. Demand deposits were about $424,916.26.

Q. The total of time and saving bear three per cent?

A. Yes sir, $404,000.00 in round numbers.

Q. Does that represent about an average of your deposits throughout the year—July 1st, deposits would represent the average thru out the year?

A. Without referring to any particular date, I think so.

Q. According to the law, you were required to keep as much as forty thousand dollars or more in reserve?

A. Yes sir.

Q. During the year 1921, did your bank borrow money for the purpose of meeting demands for loans, of so what was the largest amount borrowed at any one time and when?

A. I could not state that off hand either, I could not say—sometimes reduction of deposits cause demand for borrowing money.

Q. Are you able to say that reduction of deposits in the year 1921, ever took place to the extent to cause you to borrow money to replace your reserve?

A. Not without looking up the record I could not say. You are [fol. 159] required by law to keep on reserve and uninvested seven per cent of your demand deposits, and three of your time deposits.

Q. On July 1st 1921, what was the amount of your demand deposits, do you know?

A. No sir, I have not that with me.

Q. Can you give approximately?

A. Demand deposits were about $424,916.26

Q. The total of time and saving bear three per cent?

A. Yes sir, $404,000.00 in round numbers.

Q. Does that represent about an average of your deposits thru out the year—July 1st. deposits would represent the average thru out the year?

A. Without referring to any particular date, I think so.

Q. According to the law, you were required to keep as much as forty thousand dollars or more in reserve?

A. Yes sir.

Q. During the year 1921, did your bank borrow money for the purpose of meeting demands for loans, if so what was the largest amount borrowed at any one time and when?

A. I could not state that off hand either, I could not say—sometimes reduction of deposits cause demand for borrowing money.

Q. Are you able to say that reduction of deposits in the year 1921, ever took place to the extent to cause you to borrow money to replace your reserve?

A. Not without looking up the record I could not say.

[fol. 160] Q. I will ask you to look at your record on that point as it is right material to see whether or not your deposits were reduced?

A. Either reduction in deposits or caused by loaning, you could not judge it to either one.

Q. If your reserve was impaired——

A. The reserve was not impaired.

Q. Then the deposits would have first call on the reserve?

A. Yes sir.

Q. The necessity of the loan would be brought about by demand for loans?

A. Not exactly so, it might be caused by withdrawel of deposits.

Q. How does withdrawal of deposits, without demand for loans cause you to have to borrow money?

A. It might be by some individual checking upon the bank would reduce the reserve, the bank would not be making a loan by it, altho the deposits would be decreased.

Q. I will ask you to examine your record and state whether or not at any time during 1921, you were caused to borrow money by withdrawal of deposits?

A. I will have to look at the record—that is a thing that takes place very often.

Q. You understand we are referring to withdrawal of deposits in general banking business during the year, that's what I mean [fol. 161] by that statement. As a matter of fact your borrowing of money is for the purpose of meeting the demand of your customers for loans, is it not?

A. Primarily so.

Q. Assuming that it is only primarily so, it is true that in 1921 it was so.

A. To some extent, yes sir.

Q. You were called upon to borrow money in order to meet the demands of your customers to borrow?

A. Yes sir.

Q. What amount of money did your bank borrow during the year 1921?

A. The largest amount was on January 19th, at which time it had borrowed on bills payable $147,500.00 On re-discounts $25,325.50, a total of $172,825.50.

Q. What is the total amount that your bank can borrow under the law?

A. An amount equal to the capital, surplus and undivided profits on bills payable.

Q. What does that amount to?

A. In that case that amounted to $183,518.08, on bills payable.

Q. That was the total you could borrow under any——

A. On re-discounts an amount equal to one-half of the capital—— [fol. 162] Q. I am not asking about re-discounts——

A. Al- right.

Q. So you had borrowed in 1921 within about thirty thousand dollars of your total borrowing capacity for bills payable?

A. For bills palable, yes, sir *just* about.

Q. How much did you have borrowed on July 1st, 1921.

A. July 1st 1921, the statement submitted for record in the depositions show at the close of business June 30th, 1921. $35,000.00, however on July 1st 1921 additional bills payable of $25,000.00 was received, making a *total* on that date of $60,000.00.

Q. What was the average amount monthly that your records show your bank had borrowed during the year?

A. I could not say that accurately, I should say somewhere in the neighborhood of sixty to seventy-five thousand dollars.

Redirect examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. Your bank, altho a state bank has joined the Federal Reserve System?

A. Yes sir, a member of that, has been for several years.

Q. Consequently the amount that you have—that you are re-

quired to keep in the Federal Reserve Bank, does not apply to other state banks that are not in the Federal Reserve Bank System?

A. At that tiem we kept the reserve required by the Federal Reserve act, and was one of the few state banks which was a member [fol.163] of the Federal Reserve System. My opinion is that the reserve required by the state law at that time, was in excess of the Federal Reserve act, the state law afterwards to the best of my information, having been charged to correspond with the Federal Reserve Act.

Q. You were asked in regard to the cause of your having to borrow the implication from the question being that it was because of loans you had to make. I will ask you when you do most of your borrowing, what period of the year?

A. Ordinarily it is July 1st to about December 1st.

Q. Is not that the period of the year when your deposits are always lowest?

A. It is nearly without exception.

Q. What period of the year are your deposits highest?

A. After the opening of the tobacco market, which is usually in January or February.

Q. From that time on up until when, do they stay high?

A. They have run under the old loose leaf sustem of selling until April 15th, but under the present co-operative plan of selling, the amounts other than in the late fall, run just about the same.

Q. During these months when you say that your deposits are highest from January to April or May, do you ordinarily borrow any money at all?

A. Very seldom.

[fol. 164] Q. Does the amount that it is necessary for your bank to borrow have any relation to the amount of deposits that you have on hand at any one time during the year, and when your deposits are high—what is the state of your borrowing account when your deposits are low—what is the state of your borrowing account?

A. When the deposits of the bank is the highest, usually every bill payable or re-discount of the bank has been liquidated and the bank had in reserve a large balance, and when the amount of the deposits are lowest there is an active demand at that time of the year for money.

Q. Is it not a fact then that the size of the loans which it is necessary for your bank to obtain from other banks is directly controlled by an increase of withdrawal of your deposits?

A. It has considerable weight upon it, but not entirely so.

Q. You are asked particularly with reference to the bonds of Mr. W. Z. Thompson, is Mr. Thompson a depositor at your bank?

A. He is.

Q. Was he in 1921?

A. He was.

Q. State whether or not any portion of these bonds were paid for by withdrawal of deposits from your bank, checks on your bank?

A. I will have to look the record up on that.

[fol. 165] Q. I wish you would.

A. The witness later stated that he had examined the records and found that on March 22nd, 1921 the said W. Z. Thompson drew a check to a Florida Bank for $6,000.00 and on May 3rd drew a check to a Florida Bank for $15,250.00, on November 18th, the same bank $5,000.00, a total of $26,250.00. The witness stating however, that he did not know for what these checks were given.

Q. If in the year 1921, you had eliminated the amount of individual money that was invested in notes, both mortgage and unsecured, all kinds of notes, and had eliminated the individual money that was invested in bonds etc, do you not think that it would have increased your deposits to a sufficient amount so that you could have carried practically the same amount of loans you did carry thru that period without borrowing yourself?

A. It would have enabled us to, not only to have increased our deposits to such an extent as to pay all current borrowing, but also to have in reserve a large cash balance.

Q. You have stated on your direct examination the methods by which you think individual money invested in these various forms of security compete with your bank, which of these in your opinion is the most important so far as it does offer competition to your bank business. The withdrawal of deposits or the prevention of your obtaining loans yourself?

[fol. 166] A. Both are vital to the success of a bank, it could not run without deposits, but might buy investments on the outside such as high class bonds etc.

Recross-examination.

By Mr. H. Church Ford, attorney for defendants:

Q. Do you know how much money was borrowed out of your bank in 1921 by individual property owners for the purpose of investing in securities in that year, which otherwise the bank would have taken?

A. No sir.

Q. How are you able to say in your answer to Mr. Bradley's question that you would have enough money to liquidate your borrowing and re-discount, if it had not been that you did not know how much was taken in that year for that purpose?

A. My opinion was based on the figures as indicated by the report of Mr. Marshall.

Q. Does that report show that any of that money was taken out of your bank?

A. No sir.

Q. Or that any of it was taken out in that year?

A. No sir, the report does not show that any of that money was taken out of my bank, but with five banks in the county to furnish money, it would be but natural for at least a part of this to have been withdrawn from our institution and used for those purposes.

[fol. 167] Q. Are you able to say that if these depositors had not

taken it out and invested in these securities, that they would not have taken it out for other purposes such as investing in loans and what securities that do not come into competition with you?

A. This money might have remained on deposit in the banks of the county for an indefinite time, if it has not been thru the individual lenders seeking loans.

Q. Don't you know it to be a fact that people who have a sufficient amount of money do not allow it to lie idle in the bank for the benefit of the banks, but that you could not and would not expect that even if not invested in this character of security?

A. Our experience with customers *how* have a substantive balance in bank is that for making various sorts of investments, that considerable thought and time is given to the matter. During that time the bank has the advantage of the use of their money.

Q. As a matter of fact all of the money taken by individuals and invested in loans of various kinds thruout the county is not taken out of the bank's deposits, as a matter of fact does not practically all of the money that is loaned here on secured or unsecured paper go right back to the bank's deposits to the credit of another customer one way or the other?

A. Not exactly so, sometimes that money is sent out of the local county.

[fol. 168] Q. Sometimes there may be loans made to local people doing business with local banks on either land notes or other securities, that money still is in circulation and on deposit in the bank?

A. No sir, not exactly so——

Q. I did not ask that—To what extent would you say on an average, money that we refer to, leaves the county and what per cent remains on deposit in the banks?

A. That question would be impossible to answer.

Q. Give your best experience, you are a banker of long experience?

A. It would be impossible to answer a question of that kind.

Q. You do know it to be a fact that a large part of it does not go out of the county, don't you?

A. Sure, some of it does not go.

Q. In order to get your idea as to what constitutes competition with the banking business, do you consider that if a depositor withdraws his money from the bank, and invests it in a farm is in competition with the bank?

A. No sir, I do not.

Q. Do you consider that a man who sells his farm and takes part of the purchase price in notes, is in competition with the bank in its business?

A. No sir, I do not.

Q. Do you consider that a man who withdraws his money from the bank and invests in Government bonds, is in competition with the bank?

[fol. 169] A. Yes sir, I do.

Q. In what way.

A. In causing a reduction in the deposits of the bank, thereby lessening its earnings.

Q. Has the bank any claim on his deposits?

A. Not a bit in the world.

Q. Any right to claim it as their business assets?

A. It is a business asset as long as it remains in the bank.

Re-redirect examination.

By Mr. J. Craig Bradley, attorney for plaintiffs:

Q. You have stated that where a man sells his farm and takes part of the purchase price in lien notes, that he is not in competition with the bank—suppose these lien notes are negotiated to other parties and purchased by other individuals, state whether or not then they come in competition with your bank?

A. They come in direct competition with the bank.

Q. Just what is the per cent of the deposits in the county that your bank holds on an average—what is the size of your bank compared with the total bank deposits of the county in a general way?

A. I would say about one-third of the total amount.

[fol. 170] Q. Then in going back to the question of limiting individual investments in these various notes etc. what per cent of the money invested in these would you naturally figure that your bank would get on deposit?

A. Ought to receive about the same proportion, about one-third.

Q. Then taking the total that might be invested in the whole county. What per cent would you naturally expect would be withdrawn from your bank?

A. At least one-third I would say.

(Signed) J. C. Nichols.

Additional direct examination of Mr. G. T. Hambrick, taken at the same time and place and for the same purpose.

Direct examination.

By Mr. V. A. Bradley, attorney for plaintiff:

Q. You have heretofore stated that there were men—individuals in the County of Scott who loaned money in the same methods practically as the bank does. I wish you would give specific examples without giving the names or persons engaged in the business of loaning money buying notes and discounting them etc. That is in the year 1921?

A. I have before me a list of parties who loaned money the same [fol. 171] as the banks. I have five parties whom I know made loans in the year 1921, in the aggregate amount of $87,800.00.

Q. Take the first one you have on the list, how much did he loan in that year?

A. The first one I have, loaned money to three parties, a total of $33,000.00.

Q. The second one?

A. Loaned to five men, a total of $24,800.00.

Q. The third.

A. To two men, a total of $20,000.00, the fourth made one loan of four thousand dollars, the fifth one loan of six thousand dollars.

Q. Were these loans that they made, the paper they handled, the same kind of paper the bank handles?

A. Yes sir, the same kind of paper the bank handles.

Q. Do you know the names of the individuals to whom they loaned the money?

A. Yes sir.

Q. Were they such notes as the bank would handle?

A. Yes sir every one of them.

Q. Does this list which you have presented in any wise represent the entire amount that has been loaned that you have knowledge of in that year, or just examples?

A. Just examples, I am sure there is a good deal more. I should say four or five times that amount was loaned.

[fol. 172] Q. How did this information in regard to this come to you?

A. I have seen these notes.

Q. Did it come to you in the course of your banking business?

A. Yes sir, in the course of our banking business.

Q. Do you want to disclose their names?

A. No sir, I could not do that.

Cross-examination.

By Mr. H. Church Ford, attorney for defendants:

Q. What is your reason for not disclosing the names of these examples that you have in mind?

A. It is confidential business.

Q. In what way is it confidential—did the bank have any part in the transaction?

A. No sir, not at all. I take it that the bank has no right to disclose the name of parties to whom their customers loan money, or the amount they loan.

Q. Were these men who loaned this money depositors in your bank?

A. Most of them.

Q. Do you know the details with reference to the loans you refer to?

A. How do you mean?

Q. As to the matter of fact whether they were loans or some other character of indebtedness?

A. They were direct loans to the borrowers.

[fol. 173] Q. How do you know that?

A. The notes show they are, and checks were given to the borrowers in a number of cases on our bank.

Q. Have you custody of these notes?

A. No sir.

Q. How did you happen to see the notes?

A. I saw some of them when they were given, and a number of them are in our safety deposit boxes.

Q. Did the bank in any of these cases secure these loans for these people?

A. No sir.

Q. Did the bank, or any official of the bank, have anything to do with arranging or bring about these loans or any of them?

A. No sir, not a one of them.

Q. Were you consulted with reference to the character of these loans by any of the parties who made the loans?

A. I was in two instances.

Q. You recommended the loans to your customers?

A. I think the loans were made and then the notes shown to me and my opinion was asked regarding them.

Q. Were any of these persons to whom these loans were made customers of your bank?

A. Yes sir.

Q. Did any of them apply to your bank to make the loan?

[fol.174] A. No sir.

Q. Are they just personal notes, or notes secured by mortgage or vendor's lien?

A. All personal notes except two.

Q. What kind are they?

A. They are vendor's lien, purchased from the party who sold the real estate to the maker of the note.

Q. Are you able to state whether the bank desired these loans, and would have handled them at the time they were made by these individuals?

A. We would.

Redirect examination.

By Mr. V. A. Bradley, attorney for plaintiff:

Q. Mr. Ford asked you if you arranged these loans for your customers, where the money taken out of your bank it was a direct loss to your bank?

A. Absolutely.

Additional direct examination of Mr. J. C. NICHOLS, taken at the same time and place and for the same purpose.

Direct examination.

By Mr. V. A. Bradley:

Q. You have heretofore stated that there were individuals in this community who were engaged in loaning money in the same method [fol. 175] as the banks loan money, and that the loaning came into competition with the bank—have you specific examples of men engaged in the business in this community of loaning money?

A. Yes sir.

Q. Without giving their names will you give specific examples and the amount of the loans?

A. There were fourteen loans amounting to $24,500.00 by five individuals.

Q. Was that in the year 1921?

A. Yes sir, 1921.

Q. Does that in any wise cover the amount of money loaned by individuals that came under your observation as banker for that year, or just examples?

A. Just examples and some I have definite knowledge of, definite remembrance of?

Q. Were these loans such loans as the bank would have handled?

A. In nearly every instance.

Q. Was it desirable paper from the banker's standpoint?

A. It was.

Q. Did that actually come into competition with the bank's business?

A. It did in a way for some of the loans were made to people—customers of our bank.

Q. Did the information in regard to these loans come to you in a confidential relation as a banker?

A. It did.

[fol. 176] Q. You have specific names and amounts in your mind when making that statement?

A. Yes sir.

Cross-examination.

By Mr. H. Church Ford:

Q. Did your bank seek to make any of these loans?

A. No sir.

Q. Did it make any effort to get any of these loans?

A. No sir, they did not apply to the bank for them.

Q. The bank made no effort to secure these loans made by other people which you have testified to?

A. No sir, but the people to whom the money was loaned were in most instances our customers, and the people making the loans were our customers.

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Q. Do you know any reason why they borrowed money from these individuals rather than from the bank, if the bank would give them the same service—the same terms at that time?

A. I know of no reason.

Q. Were the loans made on six per cent paper that was good in your opinion?

A. Some of it at seven.

Q. How was the paper secured?

A. Some of it by mortgage, some of it by personal endorsement.

Q. During what period of time were these loans—what period of the year that you speak of?

A. I could not state right now, part of it during the year however.

[fol. 177] Q. There is a period during practically every year that banks do not seek loans of that character, but as a rule they have all the loans they care to carry, is that true?

A. That is true, but at the same time the bank is nearly always disposed to take up desirable loans when asked for. In these instances every person applying for the loan—it was desirable paper.

Q. Nearly every year there is a time of the year when the bank seeks to get individuals to handle loans for their customers in order to accommodate them, and frequently turn over paper you are carrying to your customers?

A. Our institution in a very few instances has. In none of these instances as far as I remember do they apply to loans to individuals.

Redirect examination.

By Mr. Bradley:

Q. In some instances the money was actually checked out of your bank for the purpose of making the loan?

A. In every instance that I have it was.

[fol. 178] Also the deposition of L. L. CALVERT, taken at the same time and place and for the same purpose.

Witness, after being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. What is your full name?
A. L. L. Calvert.
Q. Your age?
A. Thirty-five.
Q. Occupation?
A. County Clerk.
Q. Scott County, Kentucky?
A. Yes, sir.

Q. In the taxing years 1919, 1920, 1921 and 1922, were you either deputy County Clerk *of* County Clerk?

A. I was deputy county court clerk.

Q. Did your office make out tax bills for each of those years against the bank shares of the various banks of Scott county?

A. We did.

Q. When did you assume the office of County Clerk?

A. 1922.

[fol. 179] Q. After you become clerk did you make out additional tax bills against the bank shares of the various banks of the county for the years 1919, 1920 and 1921?

A. I did.

Q. I will ask you to make copies of such bills for these years as were made out by you against the Georgetown National Bank, and file them as a part of your deposition?

A. Yes, sir, I will.

Q. Mark them exhibits "A" "B" & "C".

A. Yes.

Q. Is this exact copy of the bills as made out for each one of these years and handed to the Sheriff for collection against these banks?

A. It is an exact copy of same.

Q. Give as close as you can the date on which these bills, marked "corrected receipts" were made out by you and placed in the hands of the Sheriff for collection?

A. To the best of my recollection July 1st, 1921.

Q. As I understand these bills they are made out against the bank shares of the Georgetown National Bank and the various other banks in the county for the difference between the rate of forty cents on the hundred dollars on the assessed valuation of the shares for each particular year and on the total state and county rate of $1.10 for 1919, $1.10 for 1920, and $1.05 for 1921?

A. That is correct, the receipt shows no tax, but made for the purpose of collecting the differences.

[fol. 180] Q. The receipt shows that the original tax bills as presented for each one of these years, and the amount for which they were presented were paid, and these various amounts are deducted from the total on each one of these receipts?

A. That is correct.

Q. How did you come to make out these corrected receipts?

A. Having been deputy county clerk when some were made, I knew they were figured as intangible property, and knew that the bank shares were figured as intangible property, and that rate only was charged, and believing that the law required the same rate of taxation as on other property, I then proceeded to make out corrected receipts as herein filed and figured the tax on bank shares for 1922 at said rate as other property as shown by the receipts herein filed.

Q. So these three bills for 1919, 1920 and 1921, marked "corrected receipts" and the 1922 receipt as filed were all prepared and presented in 1922, and were figured at the same rate?

A. That is true—that is correct.

(Signed) L. L. Calvert.

[fol. 181] Also the deposition of L. L. CALVERT, taken at the same time and place on cross-examination.

Cross-examination.

By Mr. H. Church Ford, attorney for defendant:

Q. What official position do you hold in Scott County?

A. County Court Clerk.

Q. Have you ever been engaged actively in the banking business in Scott County, Kentucky?

A. I have.

Q. How long were you so engaged?

A. For three years.

Q. Are you at present connected with any of the banks of Scott County?

A. A director in one.

Q. What bank are you a director of?

A. The First National Bank of Georgetown, Kentucky.

Q. Mr. Nichols has stated that where a man sold his land and took part of the purchase price in notes, that he does not consider these or that transaction in competition with the bank.

Do you as County Court Clerk have custody of the records of the county as of the year 1921, showing what notes, vendor's lien arise out of that character of transaction?

A. I have.

Q. Have you examined the assessment list filed by Mr. Ben Marshall in this case, showing the number or amounts of notes listed [fol. 182] for assessment by individual land owners, and if so are you able to state just what per cent of these secured notes, represent notes in the hands of the seller of land who takes these notes as part of the purchase price?

A. I have.

Q. What per cent of that list of secured paper is that character of paper?

A. Fifty.

Q. What per cent of the entire intangible property listed?

A. About thirty.

Q. From your experience as a banker in this county, and from your knowledge drawn from your official duties in the county Clerk's Office, and in banking, I will ask you to state whether or not in your opinion, the loans made by individual owners in this county as disclosed by this record comes into material competition with the bank, and state your reasons for your opinion?

A. No, sir—my reasons are in the first place that some of the loans made by individuals are loans which the bank refuses, and others are lien notes held direct by parties on land which they have sold, and for the further reason that *that* my observation of banks in this county has been that the banks can loan practically their limit during any time or nearly so.

[fol. 183] Q. I will ask you whether or not it is true to your knowledge that the banks of the county are frequently seeking an opportunity to get rid of loans, paper that they hold in order to release their funds, and if they do not thruout practically every year transfer a certain amount of the paper they carry to individuals——

A. Yes, sir, that is true I think, from my observations that that sometimes prevents them from having larger re-discounts.

Q. I will ask you if it is not true to your knowledge that the banks in this county have been willing in some cases to go to the extent of taking a second mortgage for a part of a loan where they could get Federal Land Bank or other landing concerns to take a first mortgage off their hands for a part of the land.

Q. Quite a number of them are recorded in my office.

Redirect examination.

By Mr. J. Craig Bradley, attorney for plaintiff:

Q. I believe you said you are County Clerk?

A. I did.

Q. You are the L. L. Calvert whose deposition we have taken showing that you made out these tax bills and receipts as a part of your duties as County Clerk?

A. That is true.

[fol. 184] Q. In these instances where you have noted that the bank took a second mortgage, I will ask you if your investigation did not further show that in every instance that a farm loan bank had a first mortgage, and also that the sum total of the two mortgages would not exceed the amount of loans originally held by the bank?

A. No, sir, to the first part of your question, and to the last—yes.

Q. To the part of the question then that asked if a farm loan bank was not always the first mortgages, is that not always the case?

A. They are first where they take them, but there are others given on farm land—the banks do not take all of the notes referred to.

Q. It is a portion of the contract of a farm loan bank mortgage, that a part of the principal be paid off each year?

A. I think that is true.

Q. From such investigation as you have made, would you not also state that in practically every one of these loans, knowing the parties and knowing the land, you would not consider them particularly desirable loans?

A. Most of them I would not say so.

Q. Would not say which way.

A. I would not say that they were not most desirable loans. However I do not think that it aided the bank except to lower their loan.

[fol. 185] With what bank were you associated when you spoke of having three years' banking experience?

A. Citizens Bank of Stamping Ground.

Q. That is one of the parties to this action?

A. Yes sir, one of the five banks of the county at present.

Q. What years was it that you were associated with the bank?
A. I am not positive right off-hand, I think 1914, 1915 and 1916.
Q. In what capacity?
A. Assistant Cashier.
Q. You spoke of the various transfers of the notes to individuals, don't you know that in a large per cent of these cases, it is where an individual customer has demanded a loan from the bank, or asked for a transfer of a loan from the bank?
A. I don't know that.
Q. Did you not find that true when in the bank at Stamping Ground, that individual customers of the bank ask the bank to invest their money for them, on deposit in the bank?
A. In a few instances I have, yes sir.
Q. And you were in there when the tax on such loans was the full personal property tax, and not simply forty cents on the one hundred dollars?
A. That is true.
Q. Do you not know that the lowering of the tax rate on such forms of investment in the hands of individuals has been an additional incentive to make them invest in that class paper?
[fol. 186] A. I do not know.
Q. In your opinion do the banks themselves come in competition with each other?
A. To some extent yes sir.
Q. Do you consider any competition in the banking business at all?
A. I do.
Q. In what does it consist?
A. Occasionally one bank will try to win deposits from another bank, which would be competitive business.
Q. Do you not consider the business of the bank to consist of just two things—getting deposits and investing these deposits——
A. That is true.
Q. Would you not say then that any person having money to deposit and investing it in the same class of security that the banks invest in necessarily comes in competition with it?
A. Not always in my opinion, no sir.
Q. Again going back to the other question that certainly each individual bank comes in competition with each individual other bank?
A. To some extent they are in competition, and in some cases I have known them to assist each other.
Q. It is true that a competitor sometimes assists his competitor?
A. Yes sir.
[fol. 187] Q. Taking your own estimate of the amount of these mortgage notes that you say are vendor's liens, that would leave still a total of over five hundred thousand dollars invested in secured notes by individuals—comparing these with the assets of the various banks, do you not think that that sum of money invested and withdrawn from deposit, necessarily comes in competition with these banks?

A. No sir, because I think a large portion of that is still not in competition, because I do not pretend to say that we have all of the land notes, or all of the other kind of investments. Or the good ones I know about, that is not a fair per cent.

Q. From your knowledge of the methods of giving property in for taxation, and from your knowledge of individual holders of paper, do you not think that the sum of five hundred thousand dollars as given in for taxation in 1921, unsecured notes, represent a very small portion of the unsecured notes actually held in the county by individuals?

A. No sir, from my observation I would say it represented a large per cent.

Q. You know of course that the bank's form of investment of its funds is in mortgage notes, vendor's lien notes, unsecured notes and collateral notes, do you not?

A. Yes.

Q. Also a few county warrants, city warrants, and bonds, and other form of bonds?

[fol. 188] A. Yes sir.

Q. Taking the notes and mortgages, vendor's liens, etc., all of these, or practically all of them are local borrowers, are they not?

A. Most of them, yes sir.

Q. Do you not personally know that it is the custom for individuals here to invest in local county warrants and city warrants?

A. I think there are, yes sir.

Q. Suppose there is a certain commodity in which five persons are dealing, both in buying and selling, then suppose we will say, that number is doubled, do you not think that that is bound to create competition in the buying and selling of that commodity, additional competition?

A. It might unless the commodity itself was enlarged which I think is true in 1921.

Q. I am referring now of course in this particular instance to a commodity, that we are dealing in is notes, local bonds and some outside bonds, warrants, we have five banks dealing in buying and selling of these commodities, do you not think that the individuals who then come into the market with funds which amount to as much or more than any bank in the community, is bound to come in competition with each of these banks?

A. Not if these banks are able to compete to the amount that their deposits will stand, I do not.

[fol. 189] Q. Do you not think that the fact that these individuals who are buying this same commodity and dealing in it, withdraw the money which they invest in this commodity, from the bank, this is an additional competition and an additional drag on the business of the bank?

A. I do not from the fact that the men who would invest in that would invest in some thing if he did not receive that.

Q. Don't you know it to be a fact that before the tax rate was lowered to forty cents on such class of paper, it was the custom of individuals to leave very large amounts of money on deposit in the

banks for a long time, and that that custom has been greatly decreased since the tax rate was lowered?

A. No sir, from my observation of the bank in which I worked the deposits that you refer to are now larger than they were at that time.

Q. It is true of course that the deposits generally in all the banks have increased since that time from any where from one hundred to two hundred per cent, has it not?

A. Not quite that large but a large per cent.

Q. What per cent of the county warrants assessed thru your office, are taken by individuals?

A. I could not say, but I do not think a very large per cent. [fol. 190] Q. Is it not a fact that anywhere from twenty five to fifty per cent of these county warrants are taken by individuals?

A. My estimate would be twenty-five per cent.

Q. Do you not consider county warrants as one of the most desirable forms of investment that the local banks have to make?

A. I consider it a good investment for any bank.

Q. Is it not one of the most desirable forms, not only on account of its surety, but on account of its rate of interest and short time?

A. I should think it very desirable on account of that, yes sir.

Q. It is also exempt from state and Federal income taxes?

A. I do not think it is exempt from Federal income tax.

Q. Of course that would make it all the more desirable?

A. If that is the case for a bank having a large income. If a bank had sufficient funds to invest in that I think it would be one of the most desirable forms.

Recross-examination.

By Mr. H. C. Ford, attorney for defendants:

Q. Have you ever seen any banks make any effort to seek investments in these county warants?

A. I have not.

[fol. 91] Q. Is it not true that the banks have been able to get all they desire, so far as you could say?

A. I have never seen any requested they did not get?

Q. Have you ever seen any of the banks deprived of any of the county warrants they wanted by reason of some individuals taking it up?

A. I have not.

Q. You issue all of the county warrants as county Clerk?

A. I do.

Q. I will ask you if it is not true that during the year 1921 the banks refused to handle the warrants at all, and the county had to borrow money in Cincinnati to finance their own county warrants?

A. That is true.

—. In regard to thes- secured notes of which you say that at least one-half of them are vendor's lien notes, and which it has been shown in the testimony are not in competition with the banks with

reference to the remainder of these secured notes I will ask you to give your opinion from your knowledge of the secured paper that is recorded in the Clerk's office, mortgage etc., and also with reference to the unsecured paper, I will ask you if it is not your opinion that a large part, in fact the greater part of that remainder, one-half million, is not paper which is taken by individuals by reason of the fact that the banks do not want it or the surety is not suffi-
[fol. 192] cient to the bank?

A. A large portion of that—it is true.

Q. I will ask you if it is not true that the individual money lenders in practically all cases prefer to invest in Government bonds, and other nontagible sur/ties, rather than in this character of surety, all things being equal?

A. That is my observation yes sir?

Q. Have you ever seen it to be the case that the banks of the county were deprived of any loan which they sought of desired by reason of competition with individual money lenders?

A. No sir.

Q. From your knowledge of the banks of the county. I will ask you whether or not there has been any competition with banks which caused the banks to have to loan their money at any reduced interest on account of competition?

A. No sir.

Q. You say that you have been a director of the First National Bank for How many years?

A. About three I believe.

Q. I will ask you if in your knowledge of the banks in this county ther- has ever been any competition in the county with banks that caused the banks at any time to have to loan their money on local paper at any less than six per cent?

A. Not from my observation, no sir.

[fol. 193] Q. From your knowledge of bank conditions. I will ask your opinion in regard to this fact. It has been stated by some of the witnesses in this case that at a certin time of the year there arises in the banks surplus on account of cash coming in from the sale of tobacco, between January and April, now as a banker I will ask you to state whether or not it would be good banking or whether or not it is the policy of banks, to seek local securities or any of the character of loans that individu*las* i-vest in as shown by this record, for the purpose of investing that surplus, or is it the policy of the bank, and is it good banking for the banks to reserve that surplus in the hands of their correspondents to meet the banks' demands which always arise later in the year?

A. I think it only safe banking to reserve that from the fact that the deposits decrease later in the year to where a bank would not be safe if they loaned their full capacity at that period.

These individuals' loans run for such a period as would not be safe for a bank to hold under those conditions.

Q. Then it is necessary for bankers to lay up that reserve in order to carry on their banking business throughout the remainder of the year?

A. It is.

[fol. 194] Q. If they invested that character of surplus that has been referred to in such paper as local individuals invest in and have listed for taxation. I will ask you if it is not true that the bank would be to a great extent put out of business the latter part of the year when the demands get heavy on them?

A. It would work quite a hardship on them.

Q. Therefore it is to the advantage of the bank to reserve that surplus rather than invest in this character of paper?

A. In this character of paper, yes sir.

Redirect examination.

By Mr. J. Craig Bradley, attorney for plaintiffs:

Q. Do you not know that under the present Federal Reserve System, any of the banks in the county can borrow a sufficient amount at any time to tide them over that portion of the year to which you have referred and do you know that they do it constantly?

A. They do, but they do that without the additional loans which the individual holds.

Q. Do you not know as a matter of fact that they all try to invest just as they can in good high rate of interest paper at any time?

A. They do so to the extent of still retaining their per cent as required by law.

Q. Of course we understand they are bound to retain the per cent required by law, but I thought you were referring to the amount [fol. 195] that they necessarily invest from time to time in Government bonds?

A. I was not referring to Government securities, except that individuals do sometimes invest in these.

Q. Do you not think if you could invest all of your surplus money up to your reserve at six per cent, no matter how much you had to borrow in the fall, it would be better banking than to carry it on deposit in correspondent's bank, or to loan at four per cent?

A. I do not because I think banks could loan too much to be safe, there has been a demand in thi- county to that extent to where it would be unsafe.

Q. That was at the only period of bank depression that we have known in the last twenty years?

A. It was not, no sir.

Recross-examination.

By Mr. Ford:

Q. I will ask you if it is not true that notwithstanding that fact that the banks of this county have kept on deposit these large surplus to meet the demands, that when the demands occur that practically every bank in the county has to borrow to its limit?

A. I think that is true.

[fol. 196] Q. You heard the testimony of the Cashier of th First

National Bank to that effect and of the Farmers Bank and Trust Company?

A. I did.

By Mr. J. B. Finnell, attorney for defendants:

Q. You have testified that you have known a number of cases where the banks in this county held high class securities such as vendors' lien notes, and like class of securities and assigned that security to individuals who had deposits in the bank so assigning these securities to them——

A. Yes sir.

Q. In all such cases that have come within your knowledge was this assignment or transfer considered a transaction in the nature of competition on the part of the individuals with the bank for that surety, or co-operation, which?

A. Co-operation.

Q. In these cases was there any reason why the bank could not have held thes- securities and not transferred them if they so desired?

A. Not to my knowledge.

Q. Does your bank so far as you know—the officials connected with it consider that if a depositor has money in your bank and takes that money out to invest in bonds of any character, or any hegh class securities, that as a result of that act, he is in competition with the business of the bank?

[fol. 197] A. I as one of them do not.

Q. Is it not true that if a depositor had money in your bank and withdraws it to buy a farm, that the bank would not consider that in competition with the bank's business.

A. I do not think so.

Q. If he withdraws it to buy bonds, would that be in competition with the bank's business?

A. I don't think so.

Q. If he withdraw it to buy any of the local high class securities held by banks, would that be in competition with your bank, if he withdrew his money on deposit to purchase high class securities held by the bank, and which the bank was willing to transfer to him, would, that be in competition with the bank's business?

A. I would not think so.

(Signed) L. L. Calvert.

[fol. 198] State of Kentucky,
County of Scott:

I, Ida Miller May, a Notary Public within and for the county and state aforesaid, do hereby certify that the foregoing depositions of George T. Hambrick, W. A. Hinton, W. G. Abbott, C. B. Roberts and L. L. Calvert and John C. Nichols were all taken before me at the time and place, and for the purpose as stated in the caption.

Each — witnesses were first duly sworn according to law before deposing.

Said depositions were taken down by me in short-hand in the presence of the witness, and thereafter by agreement of the parties transcribed by me on the typewriter, and I further certify that the foregoing is a true and correct copy of said depositions as taken down by me.

After being transcribed said depositions were read by me to each of said witnesses and subscribed and sworn to by them before me. There were present J. Craig Bradley, and V. A. Bradley, and James Bradley, as attorneys representing the plaintiff herein, and H. C. Ford representing the Commonwealth.

Given under my hand notorial seal, this 28th day of September, 1923.

(Signed) Ida Miller May, Notary Public Scott County, Kentucky. My commission expires on the 5th day of February, 1925. (Seal.)

[fol. 199] EXHIBIT IN EVIDENCE

The Exhibit referred to on page 60, order No. 13, and also filed as a part of — W. A. Hinton, Cashier of the Farmers Deposit Bank of Sadieville, Kentucky, is as follows:

Farmers Deposit Bank of Sadieville, Kentucky, June 30th, 1921

Capital Stock	$40,000.00
Surplus	40,000.00
Undivided Profits	8,055.26
Deposits	383,000.00

Officers

R. H. McCabe	President.
G. B. Johnson	Vice-President.
Wm. A. Hinton	Cashier.
Chas. P. Fields	Asst.-Cashier.
Miss Vera Hinton Moss Laura Lancaster	Individual Bookkeepers.

Statement of Farmers Deposit Bank of Sadieville, Sadieville, Kentucky

Resources

Loans and Discounts	$423,402.14
Banking House & Lot	4,000.00
Furniture & Fixtures	2,000.00
Due from Banks	33,259.88
Cash in Safe	7,518.07
Overdrafts	555.31
	$470,735.40

[fol. 200] Liabilities

Capital Stock	$40,000.00
Surplus	40,000.00
Undivided Profits	8,055.26
Due Depositors	382,680.14
	$470,735.40

Statement in Detail, Past 6 Months

Gross earnings	$16,443.75
Appropriated as follows:	
Regular Dividend of 6 per cent to Stockholders	$2,400.00
Current Expenses	3,849.79
Interest paid on time deposits	3,859.72
Taxes paid	1,304.86
Passed to Undivided Profits	5,029.38
	$16,443.75

We cordially invite your attention to the within Semi-Annual Statement. We solicit your future patronage and assure you of our willingness to render you the very best service possible in keeping with good sound banking.

Respectfully submitted, Wm. A. Hinton, Cashier.

Directors

[fol. 201]

R. H. McCabe.	A. D. Stevens.	A. Lancaster.
L. Mulberry.	C. T. Smith.	G. B. Johnson.
E. S. Zeying.	T. F. Sheritt.	Dr. J. M. Henry.
L. Risk.	Wm. A. Hinton.	

Exhibit in Evidence

The Exhibit referred to on page 60, No. 13, and also filed as a part of — C. B. Roberts, Cashier of the Citizens Bank of Stamping Ground, is as follows:

Statement of the Citizens Bank, Stamping Ground, Ky., of June 30th, 1921

Resources

Mortgage Loans	$102,759.86
Loaned on Stocks and Bonds	850.00
Other notes and Bills	.....
Personal Security	96,246.99
Liberty Bonds	2,376.00
Due from National Banks	15,077.44
Due from State Banks	6,073.53
Actual Cash on hand	4,518.48
Overdrafts unsecured	502.27
Expenses and Taxes paid	140.10
Real Estate—Banking House	5,500.00
Furniture & Fixtures	700.00
Fire Insurance Premium on Banking-House	107.15
	$234,852.52

[fol. 202]

Liabilities

Capital Stock	$20,200.00
Surplus Fund	18,700.00
Undivided Profits	1,780.48
Deposits subject to check	101,752.76
Time Deposits	61,498.97
Due Banks & Trust Companies	923.16
Due National Banks	4,810.64
Bills payable	25,000.00
Rent from safety boxes	186.51
	$234,852.52

The Citizens Bank, by C. B. Roberts, Cashier.

EXHIBIT IN EVIDENCE

No. 238

1919
~~1922~~ STATE AND COUNTY TAX RECEIPT

No. ~~4887~~

ORIGINAL

Due by Farmers Bank & Trust Co. Address ..... County, State, County and Other Taxes 1922.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots 1 Street	25617	
Tangible property other than live stock and poultry		
Intangible property	131336	
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	156953	62781
Total live stock and poultry		
Exemption from live stock and poultry		
Live stock and poultry subject to tax at 10c per $100		
Total valuation of property listed less exemptions	156953	
Total amount State tax		62781

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1 Agricultural implements			
2 Manufacturing machinery			
3 Raw material at plant			
4 Intangible property	131336		
5 Agricultural products subject to county rate of 15c			
Total	131336		
Less exemptions taken from Items 1, 2 and 3			
Total property not subject to full county rate	131336	131336	
Amount subject to county tax @ 50 per $100		25617	12809

School tax @ per $100	
School tax District No.	
Poll tax	
Other levies 20	513
Total state and county taxes	80713
6% penalty Dec. 1, 1922	
6% interest Dec. 1, 1922	
6% sheriff's commission; where levy or distraint is made	
Advertising real estate	
Total tax and penalties	

Attest: J. H. H.
Clerk.

Received payment in full
Nov. 29, 1919 ~~1920~~
F. V. Nunnelly
Sheriff.
By O. M. McFarland, D. S.

206

1919

~~1922~~ STATE AND COUNTY TAX RECEIPT

ORIGINAL

No. ~~4888~~ 283

Due by ~~Lexington~~ First Nat'l Bank Address ..... County. State, County and Other Taxes 1922.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots ..... Street		
Tangible property other than live stock and poultry		
Intangible property	138550	
Total	138550	
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	138550	55420
Total live stock and poultry ..... $		
Exemption from live stock and poultry ..... $		
Live stock and poultry subject to tax ..... $ ..... at 10c per $100		
Total valuation of property listed less exemptions	138550	
Total amount State tax		55420

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property	138550	
5 Agricultural products subject to county rate of 15c		
Total	138550	
Less exemptions taken from Items 1, 2 and 3		
Total property not subject to full county rate	138550	138550
Amount subject to county tax @ ..... per $100		

School tax @ ..... per $100	
School tax District No.	
Poll tax	
Other levies	
Total state and county taxes	55420
6% penalty Dec. 1, 1922	
6% interest Dec. 1, 1922	
6% sheriff's commission; where levy or distraint is made	
Advertising real estate	
Total tax and penalties	

Attest: J W H. Clerk.

Received payment in full Nov. 29, 1919, 1922.

F. V. Donnelly Sheriff.

By A. P. Briscoe D. S.

207

No. 199 4889

1920 STATE AND COUNTY TAX RECEIPT

ORIGINAL

Issue by Farmers Bank & Trust Co. Address ..... County. State, County and Other Taxes 1922.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots 1 Street	19180	
Tangible property other than live stock and poultry	145260	
Intangible property		
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	164440	65776
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		1
Total valuation of property listed less exemptions	164440	
Total amount State tax		65776

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1	Agricultural implements		
2	Manufacturing machinery		
3	Raw material at plant	145260	
4	Intangible property		1
5	Agricultural products subject to county rate of 15c		
	Total		
	Less exemptions taken from items 1, 2 and 3	145260	
	Total property not subject to full county rate	19180	19590
	Amount subject to county tax @ per $100		
	School tax @ per $100		
	School tax District No.		
	Poll tax		
	Other levies Road Tax 20 c per $100.00		3836
	Total state and county taxes		79202
	6% penalty Dec. 1, 1922		
	6% interest Dec. 1, 1922		
	6% sheriff's commission; where levy or distraint is made		
	Advertising real estate		
	Total tax and penalties		

Attest: J W H. Clerk.

Received payment in full Nov 29., 1920

F. V. Nunnelly Sheriff.

By A P Briscoe D. S.

208

1920
~~1922~~ STATE AND COUNTY TAX RECEIPT

No. 4890

ORIGINAL

Due by First Georgetown Natl Bank of Georgetown, Texas County, State, County and Other Taxes 1922

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots ... Street		
Tangible property other than live stock and poultry		
Intangible property	134509	
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	134509	53803
Total live stock and poultry ... $		
Exemption from live stock and poultry ... $		
Live stock and poultry subject to tax ... $ ... at 10c per $100		
Total valuation of property listed less exemptions		
Total amount State tax		53803

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property	134509	
5 Agricultural products subject to county rate of 15c		
Total		
Less exemptions taken from items 1, 2 and 3		
Total property not subject to full county rate		
Amount subject to county tax @ ... per $100		

Attest: J W H. Clerk.

Received payment in full Nov. 29, 1920 ~~1923~~

F V Nunnelly Sheriff.

By O M McFarland D. S.

School tax @ ... per $100	
School tax District No.	
Poll tax	
Other levies Road Tax 20¢ per $100	
Total state and county taxes	53803
6% penalty Dec. 1, 1922	
6% interest Dec. 1, 1922	
6% sheriff's commission; where levy or distraint is made	
Advertising real estate	
Total tax and penalties	

209

1921
~~1922~~ STATE AND COUNTY TAX RECEIPT

ORIGINAL

No. ~~4891~~ 269

Due by ~~First~~ Georgetown National Bank County, State, County and Other Taxes 1922.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots 1 Street Omitted	8000	
Tangible property other than live stock and poultry		
Intangible property	147575	
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	155575	62230
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		
Total valuation of property listed less exemptions		
Total amount State tax		62230

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property	147575	
5 Agricultural products subject to county rate of 15c		
Total		
Less exemptions taken from items 1, 2 and 3		
Total property not subject to full county rate	147575	
Amount subject to county tax @ 45 per $100	80000	3600

School tax @ per $100	
School tax District No.	
Poll tax	
Other levies 20% Road Tax	1600
Total state and county taxes	67430
6% penalty Dec. 1, 1922	
6% interest Dec. 1, 1922	
6% sheriff's commission; where levy or distraint is made	
Advertising real estate	
Total tax and penalties	

Attest: J. H. W. Clerk.

Received payment in full Nov 29, 1922

F. V. Nunnelly Sheriff.

By D. S.

210

1921
~~1922~~ STATE AND COUNTY TAX RECEIPT

ORIGINAL

No. 219 4892

Due by Farmers Bank & Trust Co. Address ..... County, State, County and Other Taxes 1922.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots 1 Street	1850 00	
Tangible property other than live stock and poultry		
Intangible property R 401	1550 12	
Total	1735 12	
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	1735 12	694 05
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		
Total valuation of property listed less exemptions	1735 12	
Total amount State tax		694 05

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property	1550 12	
5 Agricultural products subject to county rate of 15c		
Total		
Less exemptions taken from Items 1, 2 and 3		
Total property not subject to full county rate	1550 12	
Amount subject to county tax @ ..... per $100	1850 00	83 25

Attest: J.W.H. Clerk.

Received payment in full Nov. 29, 1921 1922

F. P. Donnelly Sheriff.

By ..... D. S.

School tax @ ..... per $100	
School tax District No.	
Poll tax	
Other levies Road Tax 20 & Poll 10	37 00
Total state and county taxes	814 30
6% penalty Dec. 1, 1922	
6% interest Dec. 1, 1922	
6% sheriff's commission; where levy or distraint is made	
Advertising real estate	
Total tax and penalties	

211

No. ~~4894~~

~~1922~~ STATE AND COUNTY TAX RECEIPT

ORIGINAL

No. ~~4894~~

Due by Georgetown National Bank

Address

County, State, County and Other Taxes 1922.

1919
~~1922~~
Georgetown Natl Bank

State and Other Taxes

State tax	$
County tax	$ 692.75
County school	$
County poll	$
Other levies	$ 277.10
Total tax	$ 969.85
Penalties	$
Interest	$
Sheriff's cost	$
Other cost	$
Total	$
Exonerations	$
TOTAL	$

Sheriff.

By D. S.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots Street		
Tangible property other than live stock and poultry Bank Shares	138550	
Intangible property		
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	138550	55420
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		
Total valuation of property listed less exemptions		
Total amount State tax		55420
Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.		
Item No. 5 Subject to County Rate of 15c per $100.		
1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property		
5 Agricultural products subject to county rate of 15c		
Total		
Less exemptions taken from items 1, 2 and 3		
Total property not subject to full county rate		
Amount subject to county tax @ 50 per $100	138550	69275
School tax @ per $100		
School tax District No.		
Poll tax		
Other levies 20 P Road Sup		27710
Total state and county taxes		152405
6% penalty Dec. 1, 1922		55420
6% interest Dec. 1, 1922		
6% sheriff's commission; where levy or distraint is made		96985
Advertising real estate		
Total tax and penalties		

Attest:
L P Calvert
Clerk.

Received payment in full

....., 1922

Sheriff.

By D. S.

Paid Nov 29

212

№ 257 / ~~4895~~

1920

~~1922~~ STATE AND COUNTY TAX RECEIPT

ORIGINAL

№ 257 / ~~4895~~

Due by Georgetown National Bank Address

County, State, County and Other Taxes 1922.

1920
~~1922~~

State and Other Taxes

State tax . . $
County tax . . $
County school . $
County poll . . $
Other levies . $
Total tax . . $
Penalties . . . $
Interest . . . $
Sheriff's cost . $
Other cost . . $
Total . . . $
Exonerations . $
TOTAL . . $

Sheriff.

By D. S.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots Street		
Tangible property other than live stock and poultry Bank Shares	137509	
Intangible property		
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	124549	63803
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		
Total valuation of property listed less exemptions		
Total amount State tax		53803
Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation. Item No. 5 Subject to County Rate of 15c per $100.		
1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property		
5 Agricultural products subject to county rate of 15c		
Total		
Less exemptions taken from Items 1, 2 and 3		
Total property not subject to full county rate		
Amount subject to county tax @ 50 per $100	113450	67254
School tax @ per $100		
School tax District No.		
Poll tax		1
Other levies Road Tax		26902
Total State and county taxes		147956
6% penalty Dec. 1, 1922 Nov 29, 1920		53803
6% interest Dec. 1, 1922		
6% sheriff's commission; where levy or distraint is made		
Advertising real estate. Bal. Due		9456
Total tax and penalties		

Attest: L. P. Calvert Clerk.

Received payment in full

1922

Sheriff.

By D. S.

213

No. ~~4896~~ 269

1921
~~1922~~

State and Other Taxes

State tax . . $
County tax . . $
County school . $
County poll . . $
Other levies . $
Total tax . . $
Penalties . . . $
Interest . . . $
Sheriff's cost . $
Other cost . . $
Total . . . $
Exonerations . $
TOTAL . . $

Sheriff.

By
D. S.

1921
~~1922~~ STATE AND COUNTY TAX RECEIPT

ORIGINAL

No. ~~4896~~ 269

Due by Georgetown Missouri Each Georgetown Ky

State, County and Other Taxes 1922.

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots 1 Street	8000	
Tangible property other than live stock and poultry Bank Shares	14757	
Intangible property		
Total		
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	15957	6383
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		
Total valuation of property listed less exemptions		
Total amount State tax		6383

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 10c per $100.

1	Agricultural implements	
2	Manufacturing machinery	
3	Raw material at plant	
4	Intangible property	
5	Agricultural products subject to county rate of 15c	
	Total	
	Less exemptions taken from items 1, 2 and 3	
	Total property not subject to full county rate	
	Amount subject to county tax @ 4.5 per $100	15957

School tax @ per $100	
School tax District No.	
Poll tax	
Other levies 20¢ Road Tax	3110
Total state and county taxes	16354
6% penalty Dec. 1, 1922 Nov 28 1921	6714
6% interest Dec. 1, 1922 Bal. Due	9639
6% sheriff's commission; where levy or distraint is made	
Advertising real estate	
Total tax and penalties	

Attest:
L. L. Calvert
Clerk.

Received payment in full

1922

Sheriff.

By
D. S.

214

No. ~~4897~~ 269

1922 STATE AND COUNTY TAX RECEIPT

ORIGINAL

No. 4897

Due by Georgetown Nat'l Bank County, State, County and Other Taxes 1922.

1922
Georgetown Nat'l Bank
State and Other Taxes

Description Real Estate and Improvements	Valuation	Amount of Tax
No. of acres		
Mineral rights and leases		
Town lots 1 Street	10000	
Tangible property other than live stock and poultry Bank Shares	144771	
Intangible property		
Total	154771	
Less exemptions taken from tangible property other than live stock and poultry		
Amount subject to State tax @ 40c per $100	154771	61908
Total live stock and poultry $		
Exemption from live stock and poultry $		
Live stock and poultry subject to tax $ at 10c per $100		
Total valuation of property listed less exemptions		
Total amount State tax		61908

Items Nos. 1, 2, 3 and 4 Not Subject to County Taxation.
Item No. 5 Subject to County Rate of 15c per $100.

1 Agricultural implements		
2 Manufacturing machinery		
3 Raw material at plant		
4 Intangible property		
5 Agricultural products subject to county rate of 15c		
Total		
Less exemptions taken from items 1, 2 and 3		
Total property not subject to full county rate		
Amount subject to county tax @ per $100	154771	69647
School tax @ per $100		
School tax District No.		
Poll tax		
Other levies 20 J. Road Tax		30954
Total state and county taxes		162509
6% penalty Dec. 1, 1922		
6% interest Dec. 1, 1922		
6% sheriff's commission; where levy or distraint is made		
Advertising real estate		
Total tax and penalties		

State tax	$ 619.08
County tax	$ 696.47
County school	$
County poll	$
Other levies	$ 309.54
Total tax	$ 1626.09
Penalties	$
Interest	$
Sheriff's cost	$
Other cost	$
Total	$
Exonerations	$
TOTAL	$

Sheriff.

By D. S.

Attest: L L Calvert Clerk.

Received payment in full

1923

Sheriff.

By D. S.

215

Exhibit in Evidence

The exhibit referred to on page 60, order No. 13, and also filed as a part of — J. C. Nichols, Cashier of the Farmers Bank and Trust Company, Georgetown, Kentucky, is as follows:

The Farmers Bank & Trust Company, Georgetown, Kentucky

Officers

R. B. Thomas	President.
Buford Hall	Vice-President.
John S. Gains	" "
R. Q. Ward	" "
J. C. Nichols	Cashier.

Statement June 30th, 1921

Resources

[fol. 203] Loans and Discounts	$726,708.03
U. S. Bonds and Securities	200,558.41
	$927,266.44
Bank Building	21,000.00
Furniture and Fixtures	39,870.13
Cash in Hand	17,644.91
Due from Banks	67,751.59
Overdrafts	588.94
	$1,074,122.01

Liabilities

Capital Stock	$105,000.00
Surplus	70,000.00
Undivided Profits	18,518.08
Reserve for taxes	4,270.89
Unearned Discount	12,700.00
Bills Payable	35,000.00
Deposits	828,633.04
	$1,074,122.01

Semi-annual devidend No. 30, six per cent., to credit of stockholders.

State examination. Member Federal Reserve System. Government supervision.

Directors

J. C. Bradley.	P. H. Nunnelley.	R. B. Thomas.
Noah Mulholland.	H. M. Haggard.	J. B. Ward.
John S. Gaines.	G. M. Taylor.	J. A. Hamon.
C. H. Garth.	Buford Hall.	R. Q. Ward.

(Here follow Exhibits in Evidence, marked side folio pages 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, and 215)

[fol. 216 & 217] IN CIRCUIT COURT OF SCOTT COUNTY

CLERK'S CERTIFICATE

I, B. B. Hall, Clerk of the Scott Circuit Court do hereby certify
2*
that the foregoing 714 pages contain a true, correct and complete

*In pencil in copy.

copy of all the pleadings, depositions and Exhibits filed in the case of the Georgetown National Bank against Ollie McFarland, Sheriff of Scott County, Kentucky, Etc.

Said case was lately pending in the Scott Circuit Court.

Given under my hand as Clerk of the Court aforesaid this 19th day of December 1923.

B. B. Hall, Clerk Scott Circuit.

Clerk's charge for transcript $97.30.

[fol. 218] IN COURT OF APPEALS OF KENTUCKY

OLLIE MCFARLAND, Sheriff of Scott County, Kentucky; THE FISCAL COURT OF SCOTT COUNTY, KENTUCKY, Composed of J. B. Ward, County Judge; Clayton Thomasson, County Commissioner; T. K. Shuff, County Commissioner, and L. F. Aulick, County Commissioner, Appellants,

vs.

THE GEORGETOWN NATIONAL BANK, Appellee

STATEMENT BY APPELLANTS—Filed Dec. 20, 1924

The names of the parties to this appeal are as stated in the caption of the Scott Circuit Court (on the 19th day of October, 1923) and may be found on pages 61, 62, 63 and 64 of the record.

The appeal was granted below and no summons or warning order is desired.

The names and addresses of appellee's attorneys are as follows:

Bradley & Bradley, Georgetown, Ky.
James Bradley, Georgetown, Ky.

H. C. Ford & Jas. B. Finnell, Counsel for Appellants, Georgetown, Ky.

[fol. 219] IN COURT OF APPEALS OF KENTUCKY

SUBMISSION OF CAUSE—April 16, 1924

It is ordered that this case be submitted.

[fol. 220] IN COURT OF APPEALS OF KENTUCKY

SUBMISSION OF MOTION TO ADVANCE—May 6, 1924

Came appellee, by Counsel, and filed motion to advance and for an oral argument: Which motion is submitted.

[fol. 221] IN COURT OF APPEALS OF KENTUCKY

ORDER SUSTAINING MOTION TO ADVANCE AND OVERRULING APPELLEE'S MOTION FOR ORAL ARGUMENT—May 9, 1924

The Court being sufficient- advised, it is considered that appellee's motion to advance be, and is sustained: It is further considered that appellee's motion for an oral argument be and the same is overruled.

[fols. 222 & 223] IN COURT OF APPEALS OF KENTUCKY

JUDGMENT—Feb. 24, 1925

The Court being sufficient- advised, it seems to them the judgment herein is erroneous.

It is therefore considered that the said judgment be reversed and cause remanded for a judgment as indicated in the opinion herein, which is ordered to be certified to the said Court.

It is further considered that the appellant recover of the appellee their costs herein expended.

[fol. 224] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

OPINION—Feb. 24, 1925

In 1915 the following amendment was made to Section 171 of the constitution:

"The General Assembly shall have power to divide property in two classes and to determine what class or classes of property shall be subject to local taxation."

Under this provision it was enacted in 1917 as follows:

"Money in hand, notes, bonds and other credits, whether secured by mortgage, pledge or otherwise, or unsecured * * * shall be subject to taxation for state purposes only." Section 4019a Subsection 10 Kentucky Statutes.

[fol. 225] By the same act it was provided that the shares of stock of national banks, state banks and trust companies are put in a class by themselves and are subject to a state tax on each $100.00, with this further provision:

"In addition thereto the said banks and trust companies shall pay to the local authorities in said counties, cities, towns and districts, taxes at the same rate imposed upon other personalty therein."

The result of the act is that the shares of stock in national banks, state banks and trust companies are subject to a state tax of 40¢ on each $100.00, while money in hand, notes, bonds, and other credits held by others are subject to taxation for state purposes only. Section 5219 of the U. S. Revised Statutes grants to the states the right to tax shares in the national banks, subject to this restriction:

"That the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

The Georgetown National Bank brought this action to enjoin the sheriff from collecting the county taxes from the bank for the years 1919, 1920, 1921 and 1922 on the ground that the statute was in conflict with the Federal Statute and void. The circuit court adjudged the bank the relief sought. The defendants appeal.

In Hepburn v. School District, 23 Wallace 480, it was held that municipal and school taxes may be assessed upon the shares of a [fol. 226] national bank, although mortgages, judgments, recognizances and moneys owing upon articles of agreement for the sale of real estate are exempt from taxation except for state purposes. In holding this the court said:

"It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

Again in Mercantile National Bank v. New York, 121 U. S. 138, it was held that the exemption from state taxation of Saving Banks deposits did not invalidate a statute taxing national banks. The court said:

"The main purpose, therefore, of Congress in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the Act of Congress is to be read in the light of this policy."

This rule was adhered to in National Bank v. City of Boston, 125 U. S. 83, although it was shown there "that Saving Banks were permitted to transact a banking business in the way of loans upon personal securities, upon the ground that saving banks are substantially institutions organized for the purpose of investing the savings of small depositors and not a banking institution in the commercial

sense of the word. These opinions were followed in Jenkins v. Neff, [fol. 227] 186 U. S. 230, under a statute exempting from taxation against trust companies United States securities held by them. In Merchants' National Bank v. City of Richmond, 256 U. S. 635, the court had before it the statute of Virginia, under which tax for state purposes was imposed upon bank stock, state and national, at the rate of 35¢ and a tax for city purposes at the rate of $1.40; while upon intangible personal property in general, including bonds, notes and other evidences of indebtedness the state rate was 65¢ and the city rate 40¢, or an aggregate of 95¢ upon each $100.00 of valuation as against a total of $1.75 on bank stocks. In that case the court said this:

"It also was shown by evidence, without dispute, that moneyed capital in the hands of individuals invested in bonds, notes and other evidences of indebtedness comes into competition with the national banks in the loan market."

Basing its judgment on this undisputed fact the court held the Virginia act invalid. After the decision was rendered the Congress of the United States passed the following act amending Section 5219 of the revised statutes:

"Sec. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided [fol. 228] the following conditions are complied with:

"1. (a) The imposition by said state of any one of the above three forms of taxation shall be in lieu of the others.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(c) In case of a tax on the net income of an association, the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing, and business corporations doing business within its limits.

"(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares or the net income as above provided of any national banking association owned by nonresidents of any State, or

the dividends on such shares owned by such nonresidents, shall be taxed in the taxing district where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real prop- [fol. 229] "3. Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. Approved March 4, 1923."

The Supreme Court of the United States has steadily held that the exemption of some capital is not invalid, unless the capital so exempted comes in competition with national banks. A statute of Kansas exempting from local assessment the capital stock of corporations invested in mining claims was held valid in Talbott v. County Commissioners, 139 U. S. 438. In First National Bank v. Chehalis 166 U. S. 440, the same conclusion was reached as to other capital on the ground that it did not appear that the exempted capital came in competition with national banks. The same conclusion was reached in First National Bank v. Ayers, 160 U. S. 640, and in First National Bank v. Chapman 173 U. S. 205; the ground of the decision in each of these cases being the want of a showing that the moneyed capital left unassessed or any material portion thereof, came into competition with the national banks.

[fol. 230] In this case it is not shown by evidence without dispute that the moneyed capital in the hands of individuals invested in bonds, notes and other evidences of indebtedness comes in competition with the national banks. While a number of witnesses so testify there is testimony to the contrary and the conclusion of the witnesses testifying to the existence of competition is not borne out by the facts shown by all the testimony. It is shown by all the testimony that the banks make short time loans and that they decline to make loans on long time. It is also shown that the banks are lending to the limit and are re-discounting their paper in order to accommodate customers for a large part of the year. The moneyed capital of individuals is invested in notes given for the purchase money of land or secured by a mortgage on land and running for a longer time than banks are willing to lend money for. It is not shown by anybody that any appreciable amount of money held by individuals is used in short time loans, such as the banks make, and this being true the capital invested in land notes and the like does not come in competition with the national banks, for they do not handle this character of paper. The facts shown by the record warrant the conclusion that no material part of the capital held by the individuals

is so invested as to come in competition with the national banks and on the record we so hold.

The plain purpose of the Act of Congress, approved March 4, 1923, was to remove the uncertainty following the decision of the U. S. Supreme Court in the Virginia case above referred to. To that end it was expressly provided in the Act that: "bonds, notes and other evidences of indebtedness in the hands of individual citi- [fol. 231] zens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section." Under that Act the Kentucky Statute is valid. The 4th section of the Act was added to prevent further confusion in the collection of such taxes, whether levied before or after the passage of the Act. Among other things it expressly provides: "The provisions of Sec. 5219 of the Revised Statutes of the U. S. as heretofore in force, shall not prevent the legalizing, ratifying or confirming by the States of any tax heretofore paid, levied or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section." The words "said section" must mean the section as amended by this Act; for else the words "would be valid", are meaningless; the provision plainly refers to taxes which would be valid under the Act but might not be valid under the original Act. The states needed no authority to collect taxes properly levied under the old Act. The section was intended to give the power to collect taxes levied under the old Act, if such levy was valid under the amended Act. This is conclusively shown by the words "legalizing, ratifying or confirming," for there was no need to legalize, ratify or confirm previous levies if they were valid under the old statute. The State of Kentucky has ratified and confirmed the taxes heretofore levied and assessed by collecting them. This as we know from the current history of the state has been done for the years in question. Its proceeding by the sheriff to collect the taxes in question was an [fol. 232] act ratifying and confirming the taxes theretofore levied and assessed and by the express words of the amendment, Section 5219, "shall not prevent * * * the collecting thereof to the extent that such tax would be valid under said section."

We therefore conclude that the state statute is valid and that the state has authority to collect the taxes under it. There is no limitation upon the power of Congress to pass an Act of this character authorizing the state to collect taxes previously levied.

In making out the tax bills for the years 1919, 1920 and 1921 the clerk, by mistake, failed to include in them the county taxes. In 1922, when this was called to his attention, he issued corrected tax bills including the county taxes, such as he should have issued originally. It is insisted that these correct tax bills are void. By section 4239a Kentucky Statutes it is provided that the county clerk "shall annually make out for the use of the sheriff or collector, a book of tax bills and stubbs." In making out this book he acts purely as a ministerial officer. He has no discretion to exercise. If he fails to

perform his duty, under the statute he is liable on his bond and he may be required by a mandamus to make out the proper tax bills. H has not performed his duty until he makes out the tax bills correctly. In numerous cases this court has awarded a mandamus against a ministerial officer who had failed to discharge a duty imposed upon him by statute. But in such cases the officer is not required to wait until he is required by a mandamus to act. In this [fol. 233] case the county clerk simply did what he would be required to do by mandamus if he had not made out the corrected tax bills voluntarily. The tax bills are therefore valid, for the public revenues are not to be defeated by the failure of a public officer to discharge a mere ministerial duty at the time he should have discharged it.

As to the year 1922 a different question arises. The bank in its report assessed its capital stock at $119,000. The Board, without any notice to the taxpayer, raised this to $144,772. Section 4019a, Subsec. 10 provides for the assessment of bank stock and it provides that the equalization, collection, penalties and laws relating thereto for other personal property shall apply in like manner to the collection of the taxes therein provided. Section 4053 Kentucky Statutes provides as to other personal property as follows:

"If the value fixed by the assessor be greater than that fixed by the taxpayer, it shall be the duty of the assessor to notify the taxpayer at the time of the assessment of the amount of such increase, and of the time and place of the meeting of the Board of Supervisors. The assessor shall report to the Board of Supervisors a list of all taxpayers in the county whose tax list have been added to or increased by him after receiving them from the hands of the taxpayer, together with a short statement."

There being no notice to the taxpayer of the raise in the assessment as reported by him, the raise was invalid. The circuit court did not err in so holding. It is the plain purpose of the statute, taken as a whole, to require notice to the taxpayer when the valuation fixed by him is raised by the assessing officer. The statute does [fols. 234 & 235] not require each taxpayer to watch the record and see what the assessing officer does after he returns his list. This would lead to endless confusion. Unless he has notice of a change in the valuation he has placed upon the property he has a right to assume that this valuation is unchanged. On the return of the case to the circuit court a judgment will be entered on the counterclaim for the amount of the taxes for 1922 upon the basis of the valuation fixed by the taxpayer with interest from Sept. 22, 1922. As to the other years a judgment will be entered dismissing the petition and giving judgment on the counterclaim for the taxes with interest from the time the amended tax bills were made.

Judgment reversed and cause remanded for a judgment as above indicated.

H. C. Ford, Georgetown Ky.; Jas. B. Finnell, Georgetown, Ky.; Ford & Ford, for appellant.

Bradley & Bradley, Georgetown, Ky.; James Bradley, Georgetown, Ky., for appellee.

[fol. 236] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 25, 1925

Now comes The Georgetown National Bank, plaintiff-in-error, and respectfully submits that in the record, proceedings, decisions, and final judgment of the Court of Appeals of the State of Kentucky, in the above matter, there is manifest — in this towit:

First. The Court erred in holding that the provisions of Chapter 108 of the Kentucky Statutes, and especially Section 4019a10 thereof, of the laws of the State of Kentucky, are not in conflict with and in violation of the provisions of and repugnant to United States Revised Statutes, Section 5219, for that the State of Kentucky, by and through the provisions of said chapter and said section, assumes and seeks, through the defendant-in-error, as Sheriff of Scott County, Kentucky, and the Collector of Revenue, for the purposes of said county:

[fol. 237] (a) To deprive the plaintiff-in-error, as a national banking association, of the immunities and protection provided by said Act of Congress, Revised Statutes, Section 5219, in that all taxable intangible personal property, including all moneyed capital in the hands of the individual citizens of such State excepting only the shares of stock in national banks, State banks and trust companies, in the State of Kentucky and in Scott County, Kentucky, is made taxable at the rate of 40¢ per one hundred dollars of valuation and taxable "for State purposes only," whereas shares of stock of plaintiff-in-error and all other national banking associations, State banks and trust companies doing business in the State of Kentucky, are "in addition thereto" made liable to county, city and school taxing rates levied in the several jurisdictions and in Scott County, Kentucky, aggregating a total of $2.70 per one hundred dollars of valuation.

(b) To deprive and to deny to the plaintiff-in-error, and all other national banking associations, State banks and trust companies doing business within the jurisdiction of the Commonwealth of Kentucky, the equal protection of the law and especially of the Fourteenth Amendment to the Constitution of the United States.

[fol. 238] Second. The Court erred in holding that by the provisions of Section 4019a-10 of the laws of Kentucky, the plaintiff-in-error is not deprived of its rights, privileges and immunities secured

to it and other national banking associations organized under the Act of Congress, and especially of Revised Statutes, Section 5219 thereof.

Third. The Court erred in holding that the Act of Congress, approved March 4, 1923, as an amendment and reenactment of Revised Statutes, Section 5219, was retroactive, and that said amendment "was intended to give the power to collect taxes levied under the old Act if such levy was valid under the amendment"; and "under that Act" (the amendment of March 4, 1923,) "the Kentucky Statute is valid," and the taxes levied for said county purposes for each of the years 1919, 1920, 1921 and 1922, are collectible.

Fourth. The Court erred in its interpretation and construction of Revised Statutes, Section 5219, to the prejudice and damage and injury of plaintiff-in-error.

Fifth. The Court erred in its interpretation and construction of the Act of Congress of March 4, 1923, amending and reenacting Revised Statutes, Section 5219, to the prejudice and damage and injury of plaintiff-in-error.

[fol. 239] Sixth. The Court erred in holding:

(a) That it was necessary for the plaintiff-in-error to establish its case by conclusive and undisputed evidence and in holding against the plaintiff's contention, because "in this case it is not shown by evidence without dispute that the moneyed capital in the hands of individuals invested in bonds, notes or other evidences of indebtedness comes into competition with the national banks."

(b) That "it is shown by all the testimony that the banks make short-time loans and that they decline to make longtime loans."

(c) That because banks generally, and plaintiff-in-error, avail themselves of their national charter powers to borrow money or rediscount notes, competition of individual citizens in like securities is immaterial, upon the assumption that it is not a function of banks in making money to avail themselves of their right to borrow money or rediscount during part of the year for the purpose of making short-time loans.

(d) That because "the moneyed capital of individuals is invested in notes given for the purchase money of land or secured by a mortgage on land and running for a longer time than banks are willing to lend money for," there is no competition with banks, notwithstanding the evidence established that banks did and do so invest in large amounts and are in direct competition with individual lenders to secure such loans and that national banks are expressly authorized to so invest by an Act of Congress known as Federal Reserve Act, Section 24.

(e) That "it is not shown by anybody that any appreciable amount of money held by individuals is used in short-time loans, such as the banks make, and this being true the investment in land [fol. 240] notes and the like does not come in competition with the national banks for they do not handle that character of paper";

whereas the fact is that such competition, in a material amount, was established by the evidence, and that all intangible personal property in Kentucky owned by individuals throughout the State is given the preferential and discriminatory 40¢ rate, and bank shares alone are subjected to higher rates aggregating $2.70 per hundred dollars of valuation, or higher.

(f) That "the facts shown by the record warrant the conclusion that no material part of the capital held by individuals is so invested as to come in competition with national banks, and on the record we so hold;" whereas the evidence established exactly the contrary and established that throughout the State of Kentucky, individual investors in all taxable intangible personal property have invested over $309,000,000, while the total investment in all the capital stock in all the banks in Kentucky is approximately $64,000,000; that the individual citizens of Scott County, Kentucky, had made investments in competition with the banks of Scott County to an amount of approximately $1,000,000, while the investments in the capital stock of all the banks of Scott County amounted to only $480,000, and the investments in the capital stock of the national banks of that county amounted to only $220,000.00, and the Cir- [fols. 241 & 242] cuit Court through the Chancellor so held.

T. Kennedy Helm, J. Craig Bradley, James Bradley, Attorneys for Plaintiff-in-error.

[File endorsement omitted.]

[fol 243] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed March 25, 1925

To the Honorable Warner E. Settle, Chief Justice of the Court of Appeals of Kentucky, and the Associate Justices of said Court:

Now comes The Georgetown National Bank, an national banking association organized under the Act of Congress and located in Georgetown, Scott County, Kentucky, Plaintiff in the above cause, and would show to this Honorable Court that in the record and proceedings and rendition of the Decree in the above cause by the Court of Appeals of the Commonwealth of Kentucky, it being the highest Court of said State in which a decision could be had, the said suit between The Georgetown National Bank and Ollie McFarland, Sheriff of Scott County, Kentucky, The Fiscal Court of [fol. 244] Scott County, Kentucky, composed of J. B. Ward, County Judge, Clayton Thomason, County Commissioner, T. K. Shuff, County Commissioner and L. F. Aulick, County Commissioner, manifest error has occurred greatly to its damage whereby petitioner feels aggrieved;

That in the record and proceedings it will appear that there was drawn in question the validity of a statute, towit, Section 4019a-10, of said Commonwealth, and the authority exercised under said State by the aforesaid defendants-in-error, on the ground of the repugnance thereof to the Constitution and the laws of the United States, and especially the Act of Congress, Section 5219, all of which is apparent in the records and proceedings of the case, and specifically set forth in the Assignment of Errors filed herewith.

Wherefore your petitioner prays that its appeal be allowed and that a transcript of the record, proceedings and paper upon which said orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said Court in such cases made and provided, that the same may be inspected and corrected as according to law and justice should be done.

Georgetown National Bank, by T. Kennedy Helm, J. Craig
[fols. 245 & 246] Bradley, James Bradley, Its Attorneys in Law and in Fact.

[File endorsement omitted.]

[fol. 247] IN COURT OF APPEALS OF KENTUCKY

WRIT OF ERROR—Filed March 25, 1925

The President of the United States of America to the Honorable Judges of the Court of Appeals of the Commonwealth of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in said Court of Appeals of Kentucky, before you or some of you, being the highest court of law or equity of the said Commonwealth, in which decision could be had, in the said suit between The Georgetown National Bank and Ollie McFarland, Sheriff of Scott County, Kentucky, and The Fiscal Court of Scott County, Kentucky, composed of J. B. Ward, County Judge, Clayton Thomason, County Commissioner, T. K. Shuff, County Commissioner and L. F. Aulick, County Commissioner, wherein was drawn in question the validity of a statute of or an authority exercised under such State on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of their validity, and the decision was against the title, right, privilege and immunity specially set up and claimed under the said Constitution and statute of the United States, and manifest error has happened to the great damage of the plaintiff-in-error, as is said and appears by its complaint; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under

your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this Writ, so that you have the same in said Supreme Court at Washington within thirty (30) days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

[fols. 248-250] Witness the Honorable William Howard Taft, Chief Justice of the United States, this 25 day of March in the year of our Lord one thousand nine hundred and twenty-five.

J. W. Menzies, Clerk United States District Court, Eastern District of Kentucky, by Lillian M. Wiard, D. C. (Seal U. S. District Court, East. Dist. of Ky., U. S. of America.)

The above Writ is allowed by Warner E. Settle, Chief Justice Court of Appeals of Kentucky.

[fols. 251 & 252] Bond on Writ of Error for $5,000.00—Approved March 25, 1925; omitted in printing

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[fol. 253] In Court of Appeals of Kentucky

[Title omitted]

Order Allowing Writ of Error—Filed March 25, 1925

On this, the 25 day of March A. D. 1925, came on to be heard the application of The Georgetown National Bank, said plaintiff being represented by counsel, for a Writ of Error, and it appearing to the Court, from the petition filed herein and the record filed therewith, that the application ought to be granted and that a transcript of the record and proceedings and papers, upon which the judgment of the Court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in the petition, that such proceedings may be had as will be just in the premises.

It is, therefore, ordered that the Writ of Error be allowed upon the plaintiff's giving bond, conditioned as the law directs, in the sum of Five Thousand ($5,000.00) Dollars, which bond shall operate as a supersedeas of the judgment; and that a true copy of the record, assignment of errors and all proceedings had in the case in the Court of Appeals of the Commonwealth of Kentucky, shall be transmitted to the Supreme Court of the United States, properly certified, as the law directs, that the said Court may inspect the same and do what according to law should be done.

[fols. 254 & 255] Witness the Honorable Warner E. Settle, Chief Justice of the Court of Appeals of Kentucky, this 25 day of March, 1925.

Warner E. Settle, Chief Justice, Court of Appeals of Kentucky.

[fol. 256] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed March 30, 1925

It is hereby stipulated and agreed by the parties hereto in regard to the printed pamphlet filed with Ben Marshall's deposition, being the fifth annual report of the Kentucky State Tax Commission for 1922, as follows:

1. That the above exhibit referred to in the evidence was made and signed by the State Tax Commission to the Governor, and is pursuant to law.

2. That only the following parts of the report are pertinent to this case:

A complete list of the counties of the State as they are given and numbered in the report as shown by column- 1-2 on pages 8-24-40.

The value of timber, improvements and land for each county as indicated in column 1 on pages 9-25-41.

The total value of lots and improvements for each county is indicated by column 4 on pages 10-28-42.

The total value of lots and improvements for each county is indicated by column 4 on pages 10-26-42.

[fol. 257] The total value of all intangible personal property for each county; the total value of bank shares; the total amount of exemptions for each county, and the grand total of all property subject to taxation (including intangibles and bank shares) for state purposes as indicated by column- 3-4-5-6 on pages 20-36-52.

Table number 2 on page 56-57.

Table number 8 on page 78.

It is further stipulated and agreed that the clerk of Court of Appeals in copying and certifying this record to the Supreme Court of the United States shall only keep the above po-tion of said exhibit. He will copy those portions in the same form as they are printed in said report.

Bradley & Bradley, Atty-. for Georgtown National Bank.
H. C. Ford, County Attorney, Scott County, Kentucky, and Attorney Representing the Above-named Defendant.

[File endorsement omitted.]

[fol. 258] BEN MARSHALL EXHIBIT "A"

Table No. 8

Total of All Property in Kentucky Subject to Taxation for State Purposes

Lands, timber and improvements	$736,271,726 @ 40c.	$2,945,086.90
Mineral rights and leases	21,172,383 @ 40c.	84,689.53
Town lots and improvements	438,132,922 @ 40c.	1,752,531.69
Tangible personal property other than live stock and bank shares	276,087,129 @ 40c.	1,104,348.52
Bank shares	64,183,735 @ 40c.	256,734.94
Live stock	31,682,831 @ 10c.	31,682.83
Intangible personal property	309,704,155 @ 40c.	1,238,816.62
Total	$1,877,234,881	$7,413,891.03
Bank deposits	$270,121,440 @ 10c.	$270,121.44
Building and loan association stock	32,081,050 @ 10c.	32,081.05
Railroad tangible property	125,234,264 @ 40c.	500,937.06
Railroad franchise assessment	52,594,559 @ 40c.	210,378.23
Franchise assessment of other corporations	29,512,471 @ 40c.	118,049.88
Distilled spirits in bonded warehouses, 434,201 bbls. @ $40	17,368,040 @ 40c.	69,472.16
Total property and tax thereon	$2,404,146,705	$8,614,930.85

[fol. 259] Table No. 2

A Tabulation Showing the Assessment and Valuation of the Various Kinds of Property Listed as of July 1st, 1921, for Taxation for 1922, and the Amount of Revenue Derived from Each Kind and Character of Property so Listed

Kind of property		Assessed valuation	Revenue paid
Farm lands, including timber and improvements		$736,271,726	$2,945,086.90
Mineral rights and leases		21,172,383	84,689.53
Town lots and improvements		438,132,922	1,752,531.69
Total assessment and tax on real estate		$1,195,577,031	$4,782,308.12
Wines, whiskeys and brandies		267,595	1,070.38
Stores and stocks of merchandise		60,232,026	240,928.10
Raw material, not at plant		5,424,244	21,696.98
Bees		124,756	499.02
Mechanics' tools		810,404	3,241.62
Automobiles		22,113,159	88,452.64
Motor trucks		3,489,164	13,956.66
Motor ambulances and hearses		257,722	1,030.89
Carriages and other vehicles		1,826,728	7,306.91
Provisions		1,178,820	4,715.28
Furniture and fixtures not in residence		4,621,884	18,487.54
Musical Instruments		5,361,523	21,446.09
Paintings and pictures		254,320	1,017.28
Libraries and books		775,778	3,103.11
Jewelry		2,942,298	11,769.19
Household and kitchen furniture	$28,000,718		
Less exemptions allowed persons with a family	$25,469,139		
		2,531,579	10,126.32

Kind of property		Assessed valuation	Revenue paid
Gold, silver and plated ware		657,633	2,630.53
Telephone systems		1,793,039	7,172.16
Machinery and implements not used in farming		5,130,861	20,523.44
Boilers, steam and gas engines not used in manufacturing		1,389,699	5,558.80
Boats and water crafts		11,854,125	47,416.50
Mineral products		885,408	3,541.63
Quarries, gas and oil wells, etc		405,760	1,623.04
Coal mine equipment		18,780,201	75,120.80
Patent rights and trade marks		423,837	1,695.35
Building and other materials		2,919,301	11,677.20
Miscellany		33,525,206	134,100.82
Any and all other property	$9,173,305		
Less exemptions therefrom	5,143,408		
		4,029,897	16,119.59
Agricultural implements	$9,998,103		
Less exemptions therefrom	977,812		
		9,020,291	36,081.16
Manufacturing machinery		21,018,485	84,073.94
Raw material at plant		28,828,514	115,314.06
Agricultural products		23,212,872	92,851.49
Total assessment of tangible personal property, after deducting exemptions		$276,087,129	$1,104,348.52
[fol. 260] Live stock	$57,495,823		
Less exemptions	25,812,992		
		31,682,831	31,682.83
Intangible personal property		309,704,155	1,238,816.62
Bank shares		64,183,735	256,734.94
Total assessments as of July 1, 1921		$1,877,234,881	.....
Total revenue therefrom			$7,413,891.03
Farm lands paid in taxes			$2,945,086.90
Mineral rights and leases			84,689.53
Town lots and improvements			1,752,531.69
Total paid by real estate			$4,782,308.12
Tangible personal property, other than live stock			$1,361,083.46
Live stock @ 10c. rate			31,682.83
Intangible personal property			1,238,816.62
			$7,413,891.03

Line number	Counties	I. Lands, improvements, and timber—Total value of lots and improvements	I. Lands, improvements, and timber—Total value of timber, improvements, and land	Total value of all intangible personal property	Total value of bank shares	Total amount of exemptions	Grand total of all property subject to taxation (intangibles and bank shares must be included) for state purposes
1	Adair	$463,740	$3,429,701	$616,481	$263,471	$474,144	$5,356,682
2	Allen	924,670	4,442,149	755,407	94,028	661,202	8,462,905
3	Anderson	1,100,790	3,942,240	726,999	544,481	484,305	7,119,937
4	Ballard	677,594	5,958,542	892,624	162,125	398,516	8,560,021
5	Barren	1,832,255	7,288,042	1,307,087	515,486	817,556	12,493,828
6	Bath	830,247	9,428,539	1,184,274	404,247	258,750	12,630,257
7	Bell	3,627,295	5,503,266	2,262,815	442,356	405,500	15,693,053
8	Boone	1,030,045	9,464,595	863,315	538,170	370,790	13,321,780
9	Bourbon	4,389,675	22,629,605	3,560,215	1,161,892	405,750	35,069,697
10	Boyd	9,886,929	3,623,722	5,422,837	1,483,916	721,924	27,244,529
11	Boyle	4,392,325	8,482,172	5,496,107	645,218	378,949	21,126,243
12	Bracken	1,170,396	6,076,700	554,965	446,958	282,330	8,983,353
13	Breathitt	441,840	2,355,925	57,032	151,288	164,945	3,977,780
14	Breckinridge	1,083,717	4,791,033	778,093	252,128	713,858	8,147,096
15	Bullitt	697,375	4,000,940	809,044	137,926	406,755	6,559,382
16	Butler	292,332	3,304,647	475,184	195,661	363,500	4,908,825
17	Caldwell	1,302,537	3,154,619	742,620	501,192	530,313	6,476,918
18	Calloway	1,343,745	7,060,611	1,125,437	175,909	905,257	10,956,703
19	Campbell	24,596,365	5,571,441	6,085,010	840,722	199,100	42,857,382
20	Carlisle	536,862	3,881,818	1,038,126	163,405	348,471	6,219,268
21	Carroll	1,380,068	2,815,439	424,337	361,752	146,000	5,856,908
22	Carter	741,469	3,297,854	477,755	303,579	390,577	6,113,306
23	Casey	251,305	4,473,695	277,225	117,565	188,675	5,654,135
24	Christian	5,833,684	13,117,840	5,478,181	815,210	620,980	29,527,85\
25	Clark	4,999,670	15,070,450	3,040,365	1,134,720	487,750	27,619,360
26	Clay	209,190	3,398,913	354,092	102,071	372,112	4,898,274
27	Clinton	134,155	1,650,753	208,979	47,120	146,621	2,307,290
28	Crittenden	884,325	3,700,595	717,920	126,470	528,240	6,614,415
29	Cumberland	169,530	2,549,140	290,873	80,458	335,247	3,499,326

BEN MARSHALL EXHIBIT "A"—Continued

Line number	Counties	Total value of lots and improvements	I. Lands, improvements, and timber—Total value of timber, improvements, and land	Total value of all intangible personal property	Total value of bank shares	Total amount of exemptions	Grand total of all property subject to taxation (intangibles and bank shares must be included) for state purposes
30	Daviess	7,495,543	14,690,335	4,790,121	1,304,519	721,200	36,781,373
31	Edmonson	72,850	2,765,060	310,964	50,536	448,123	3,824,772
32	Elliott	34,015	1,233,709	90,060	14,474	288,523	1,646,160
33	Estill	1,416,679	2,055,172	511,586	87,925	399,963	5,584,139
34	Fayette	34,448,252	27,466,963	17,751,382	4,137,790	727,750	98,508,775
35	Fleming	1,357,351	8,857,746	1,152,831	415,706	657,779	13,028,586
36	Floyd	793,210	3,415,519	212,877	181,337	808,049	9,619,660
37	Franklin	4,433,844	6,673,715	4,094,163	896,174	418,710	18,812,559
38	Fulton	2,417,175	4,960,200	1,138,782	521,907	591,330	10,882,210
39	Gallatin	360,382	1,822,313	336,944	107,782	175,334	3,015,171
40	Garrard	1,149,211	9,966,023	2,105,849	361,485	398,500	14,938,734
[fol. 262]							
41	Grant	1,024,007	6,445,134	539,911	495,141	298,606	9,1[illegible],615
42	Graves	3,455,538	13,074,816	4,227,414	792,078	828,500	24,215,658
43	Grayson	785,480	4,126,615	681,297	201,334	422,613	6,644,191
44	Green	241,796	2,639,524	269,689	100,518	396,583	3,550,839
45	Greenup	1,322,136	2,675,368	549,973	145,993	471,970	5,729,962
46	Hancock	322,017	2,361,860	207,568	75,466	198,126	3,445,997
47	Hardin	1,874,037	7,258,207	2,175,338	496,891	462,535	13,099,352
48	Harlan	2,162,435	11,073,715	1,313,505	182,440	924,550	21,203,100
49	Harrison	3,100,125	12,398,145	2,146,425	638,385	681,595	19,966,850
50	Hart	922,713	4,910,991	881,147	246,837	654,455	7,826,382
51	Henderson	5,400,635	14,120,430	3,770,055	1,199,153	978,945	29,031,388
52	Henry	1,675,610	8,483,998	1,348,035	415,782	374,825	13,049,693
53	Hickman	614,027	5,720,605	1,057,889	154,728	303,500	8,280,503
54	Hopkins	4,003,890	7,024,494	1,417,411	457,434	495,606	16,324,214
55	Jackson	58,819	1,827,492	191,524	44,495	459,100	2,699,122
56	Jefferson	171,162,442	28,770,860	131,262,883	17,761,205	4,383,000	459,420,997
57	Jessamine	1,577,271	10,284,195	2,112,660	679,080	258,230	15,609,549

58	Johnson	1,051,464	2,701,510	571,469	431,006	702,628	7,396,777
59	Kenton	29,467,645	6,392,805	9,024,314	2,249,275	268,725	53,118,867
60	Knott	61,275	2,389,326	181,253	21,476	364,061	4,283,913
61	Knox	1,272,716	3,923,203	822,550	181,595	470,500	7,534,680
62	Larue	603,471	2,798,511	673,424	177,801	374,609	5,903,549
63	Laurel	638,015	2,993,279	247,607	108,625	693,223	4,752,274
64	Lawrence	893,685	3,100,512	309,485	219,738	666,047	6,247,554
65	Lee	312,180	1,299,608	191,702	74,089	215,525	4,286,979
66	Leslie	83,620	3,079,229	99,567	18,658	156,545	3,979,194
67	Letcher	1,091,739	6,807,644	543,037	243,240	840,515	12,895,304
68	Lewis	435,430	3,229,808	272,536	61,840	319,923	4,735,012
69	Lincoln	1,243,098	8,161,043	1,230,247	494,524	359,473	12,294,55[illegible]
70	Livingston	365,623	3,070,977	554,955	175,146	398,042	4,869,830
71	Logan	2,172,730	8,644,610	2,222,350	339,092	509,470	15,150,352
72	Lyon	445,310	2,423,041	337,177	90,065	319,862	3,913,135
73	Madison	3,547,220	15,478,020	3,805,270	881,830	462,870	25,846,470
74	Magoffin	169,485	2,028,333	230,819	46,615	387,078	3,830,341
75	Marion	1,549,144	5,953,063	1,890,098	554,517	336,250	10,950,055
76	Marshall	484,550	4,572,372	977,277	195,436	339,975	6,832,056
77	Martin	247,846	1,465,312	104,983	50,668	269,062	2,998,624
78	Mason	4,616,715	11,738,995	2,466,071	733,183	262,750	23,616,414
79	McCracken	10,233,870	6,033,830	5,249,300	819,370	420,500	28,007,275
80	McCreary	138,487	2,529,368	541,067	47,814	417,120	4,277,266
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81	McLean	868,803	5,085,995	412,410	202,766	151,250	7,561,361
82	Meade	281,166	2,669,085	328,484	45,888	220,925	4,366,409
83	Menifee	34,985	1,032,812	82,686	.....	193,585	1,663,444
84	Mercer	2,038,751	10,408,450	2,038,811	525,738	614,006	16,622,308
85	Metcalfe	149,090	2,361,309	276,219	64,017	388,448	3,191,976
86	Monroe	331,288	2,787,053	405,780	170,548	296,472	4,219,145
87	Montgomery	2,296,000	7,738,075	2,479,660	515,770	218,750	14,426,225
88	Morgan	205,835	3,245,265	249,427	88,809	619,332	4,825,176
89	Muhlenberg	2,159,518	4,306,768	1,311,044	287,919	1,161,307	11,092,669
90	Nelson	1,827,835	9,174,433	3,227,823	529,202	418,500	16,470,543
91	Nicholas	989,735	7,726,030	1,627,256	242,958	414,080	11,314,000
92	Ohio	1,204,525	7,247,725	694,420	265,710	787,250	11,743,805
93	Oldham	917,026	5,607,222	1,709,977	153,098	322,032	9,131,213

BEN MARSHALL EXHIBIT "A"—Continued

Line number	Counties	Total value of lots and improvements	I. Lands, improvements, and timber—Total value of timber, improvements, and land	Total value of all intangible personal property	Total value of bank shares	Total amount of exemptions	Grand total of all property subject to taxation (intangibles and bank shares must be included) for state purposes
94	Owen	537,625	6,158,380	377,120	314,910	267,186	7,936,339
95	Owsley	31,570	1,299,441	81,120	30,823	273,252	1,685,093
96	Pendleton	813,205	6,613,459	723,941	357,294	552,550	9,512,524
97	Perry	2,152,171	3,674,256	510,954	280,961	269,817	13,941,801
98	Pike	1,927,842	7,503,403	1,577,950	647,952	1,152,083	19,698,726
99	Powell	200,700	1,285,069	281,267	71,779	208,286	2,394,448
100	Pulaski	2,186,450	4,882,093	507,510	549,833	1,025,037	9,701,893
101	Robertson	165,560	2,289,422	47,455	60,242	172,236	2,728,231
102	Rockcastle	477,512	2,101,230	194,767	98,443	500,315	3,419,930
103	Rowan	359,862	1,223,118	432,749	67,575	339,669	2,848,415
104	Russell	139,596	2,162,574	333,513	78,039	212,786	3,085,978
105	Scott	2,523,920	13,952,663	1,617,616	539,466	411,500	20,070,323
106	Shelby	2,906,380	16,410,441	3,739,292	785,327	372,330	25,850,629
107	Simpson	1,429,364	4,535,798	1,384,991	193,023	298,377	8,629,661
108	Spencer	457,414	5,314,938	693,904	149,420	297,664	7,235,130
109	Taylor	636,580	2,775,435	759,714	117,342	375,050	4,962,234
110	Todd	1,087,415	5,092,343	940,683	369,642	318,244	8,359,989
111	Trigg	434,942	3,659,605	890,249	176,249	356,890	5,763,630
112	Trimble	153,590	2,816,205	177,561	96,891	251,140	3,554,667
113	Union	2,038,790	12,910,467	2,437,464	484,744	406,620	20,543,192
114	Warren	6,698,625	12,931,529	3,291,763	1,046,584	494,305	26,892,274
115	Washington	822,665	6,892,135	1,698,201	371,643	297,250	10,509,406
116	Wayne	571,917	3,868,542	820,241	181,392	556,599	6,751,318
117	Webster	2,036,365	5,259,120	830,935	440,655	325,000	10,562,970
118	Whitley	2,098,117	3,081,871	1,120,925	320,588	995,742	8,205,174
119	Wolfe	152,957	1,474,983	75,715	70,096	269,526	2,378,203
120	Woodford	1,676,293	13,330,339	4,094,318	596,407	305,090	21,624,894
	Totals	$438,132,922	$736,271,726	$309,704,155	864,183,735	$57,403,351	$1,877,234,881

[fol. 265] CITATION—In usual form, showing service on H. C. Ford; filed Apr. 4, 1925; omitted in printing

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[fol. 266] IN COURT OF APPEALS OF KENTUCKY

RETURN TO WRIT OF ERROR

In obedience to the commands of the attached Writ of Error, I hereby transmit to the Supreme Court of the United States, a complete transcript of the record with all things touching the same as appears from the records and files of my office, in the case of The Georgetown National Bank, appellee and Plaintiff in Error, against Ollie McFarland, Sheriff, etc., Appellant and Defendant in Error.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office: Done at Frankfort, Kentucky, on this the 17th day of April, A. D., 1925.

Jno. A. Goodman, Clerk of the Court of Appeals of Kentucky. (Seal Court of Appeals, Kentucky.)

Fee, $91.80.

Endorsed on cover: File No. 31,067. Kentucky Court of Appeals. Term No. 377. The Georgetown National Bank, plaintiff in error, vs. Ollie McFarland, Sheriff of Scott County, Kentucky; The Fiscal Court of Scott County, Kentucky, etc., et al. Filed April 22nd, 1925. File No. 31,067.

FILED
APR 30 1926
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 78

GEORGETOWN NATIONAL BANK, *Plaintiff-in-Error,*

vs.

OLLIE M. McFARLAND, Sheriff of Scott County, Kentucky;
THE FISCAL COURT OF SCOTT COUNTY, KENTUCKY, ETC., ET AL., *Defendants-in-Error.*

BRIEF FOR PLAINTIFF-IN-ERROR.

J. Craig Bradley,
T. Kennedy Helm,
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Victor A. Bradley,
James Bradley,
James W. Stites,
Of Counsel.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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Supreme Court of the United States

OCTOBER TERM, 1925.

No. 377.

GEORGETOWN NATIONAL BANK, - *Plaintiff-in-Error,*

vs.

OLLIE M. MCFARLAND, SHERIFF OF SCOTT COUNTY, KENTUCKY;
THE FISCAL COURT OF SCOTT COUNTY, KENTUCKY, ETC., ET AL., - *Defendants-in-Error.*

BRIEF FOR PLAINTIFF-IN-ERROR.

This case is here by a writ of error to the Court of Appeals of Kentucky (R. 118). The judgment of the State Court of last resort complained of (R. 109) was entered February 24, 1925 (reversing the judgment of the Scott Circuit Court (R. 31), which had held that the Kentucky Statutes, Section 4019a-10, was in violation of and repugnant to Section 5219 of the United States Revised Statutes and of the Fourteenth Amendment to the Constitution of the United States), holding that there was no repugnancy to or violation of the Federal law and directing the entry of judgment for the defendants. The opinion of the Court of Appeals

of Kentucky is officially reported as follows: O. McFarland, Sheriff, v. Georgetown National Bank, 208 Ky. 7.

CLAIMS AND RULINGS.

The State of Kentucky has no income tax law. All property, not exempt by the Constitution, is subject to **ad valorem** taxation. The Legislature has the power to classify property and limit the rates for the State and local taxes or totally withhold it from local taxation. It has made a class of all taxable stocks, bonds, secured and unsecured notes, accounts and other credits, which is subject to only 40 cents per $100 for State purposes but excepted from this class of all intangible property **only** bank shares, shares in life insurance companies and corporate franchises. The latter are taxable at rates from $2.70 to $3.60 per $100. A discrimination between intangible personal property generally and bank shares of 700% to 900%. The defendant-in-error as Sheriff of Scott County, Kentucky, threatened distraint for back taxes on "corrected" tax bills for the years 1919 to 1922 inclusive.

The plaintiff-in-error, a national bank, brought this suit on behalf of its numerous shareholders against whom the Sheriff was threatening summary proceedings for the collection of local taxes for the years 1919, 1920, 1921 and 1922. The Chancellor held that Section 4019a-10 of the Kentucky Statutes was in violation of, and repugnant to, the Fourteenth Amendment and Section 5219 of the U. S. Revised Statutes, on the ground that under the State law **all** intangible personal prop-

erty, including all "other moneyed capital in the hands of individual citizens" in the State of Kentucky, was subject to taxes for State purposes alone at the rate of 40 cents per $100 and totally exempted from local taxation, while, by the **express wording of the statute,** bank shares and corporate franchises were excepted from the exemption and made subject to all local taxes. In the case of the plaintiff-in-error this exception made its shares subject to aggregate rates ranging from $2.70 to $2.80 per $100 for the years in question. Of the added sums the city receives $1.65, the county 50 cents, and the county for road tax, 20 cents per $100 of valuation, though only the county general and road taxes were before the Court in this suit.

Plaintiff-in-error alleged (R. 3-4-5) and the Chancellor in the lower court, in substance, held (R. 32) that there were in the hands of at least 250 individual citizens and residents of Scott County, moneyed capital invested in taxable **notes, bonds and other credits secured by pledge, mortgage or otherwise, or unsecured,** of an assessed value of more than $1,540,244—a material amount—which came into direct and active competition with the bank shares of the plaintiff-in-error of an assessed value of $144,771, and with the assessed value of the shares of stock of all the State and national banks in Scott County of $539,466.00.

It was also shown that in the State of Kentucky there was assessed taxable intangible personal property (or moneyed capital) exclusive of bank shares, amounting to $309,764,155, whereas the total assessed value of the shares of stock of all the State and na-

tional banks and trust companies in Kentucky is only $64,183,735. It was alleged and found that such taxable intangible personal property (moneyed capital) in the hands of individual citizens was of the same class and character as the bank shares, was material in amount and came into competition therewith. The premises considered, the plaintiff-in-error claimed and the Chancellor held, as all of said taxable intangible personal property in the hands of individual citizens is exempted from any local taxation and only the shares of stock in banks and trust companies in the hands of their shareholders are subjected to local rates of taxation, that, because of such discrimination, the Kentucky Statutes, Section 4019a-10 is repugnant to United States Revised Statutes, Section 5219, and to the Fourteenth Amendment of the Constitution of the United States (R. 32).

The plaintiff's petition was to enjoin the collection of additional county taxes for the tax years 1919, 1920, 1921 and 1922, based upon the assessment of property for said years as of July 1st each preceding year. By stipulation it was agreed (R. 22) that proof should be taken for the tax year 1922 based on the assessment of July 21, 1921, which should be considered and treated by the Court as applying to all of the years in controversy.

The Court of Appeals of Kentucky reversed the judgment of the lower court and directed judgment for the defendant (R. 109-114), holding that the amendment by Congress of March 4, 1923, to Section 5219

of the Revised Statutes was self-executing retroactively without curative State legislation and authorized the collection of such taxes; that the plaintiff-in-error's evidence did not without dispute establish competition of other moneyed capital; and that some exemption of moneyed capital was within the power of the State under this Court's decisions; and, therefore, that the Kentucky Statutes, Section 4019a-10, was not violative of Section 5219 of the United States Revised Statutes, but valid.

JURISDICTION.

The jurisdiction of this Court is given by Section 237 of the Federal Judicial Code, amended and continued by the Act of Congress of February 13, 1925, and is sustained by this Court's decisions in Merchants National Bank v. Richmond, 256 U. S. 635-637; and First National Bank of Guthrie Center v. Anderson, County Auditor, et al. (decided January 4, 1926, not yet officially reported), 46 Supreme Court Reporter, 135.

CONDENSED ASSIGNMENT OF ERRORS (R. 115).

(In full in Appendix, p. 79.)

First and Second. The Court erred in holding Kentucky Statutes, Section 4019a-10, not void as violative of U. S. Rev. Stat., Sec. 5219, and the Fourteenth Amendment, and in holding that it did not deprive plaintiff-in-error of its rights, privileges and immunities.

Third. The Court erred in holding that the Act of Congress, approved March 4, 1923, as an amendment of Section 5219, was retroactive without legislative action by the States to make valid the collection of taxes.

Fourth. The Court erred in interpreting and construing Rev. Stat., Sec. 5219.

Fifth. The Court erred in interpreting and construing the Act of Congress of March 4, 1923, amending Rev. Stat., Sec. 5219.

Sixth. The Court flagrantly erred in its finding of facts as to competition of other moneyed capital with national bank shares and the investment of the proceeds thereof.

ARGUMENT.

I.

SHORT STATEMENT.

In 1891 Kentucky adopted a new Constitution which provided in Sections 171 and 172 for uniform **ad valorem** taxation of all property. By an amendment in 1916 to Section 171 the General Assembly was empowered to classify property and to prescribe the same rate of taxation for "each class."

At an Extraordinary Session of the General Assembly in 1917 the tax laws only were revised. A State Tax Commission was created with broad powers to prescribe forms and enforce the law and to prescribe the forms for taxpayers' reports, county tax commissioners' recapitulations and county clerks' form for bills to be collected by the sheriffs (to be commented upon later).

The General Assembly "classified property" **by Section 4019a-10 and subordinate sections.** Kentucky is an agricultural and live stock State but it was realized by the General Assembly that manufacturing should be encouraged.

The classification laws adopted by the General Assembly made four classes of property. The sections of the Kentucky laws are printed in the appendix (p. 71);

The first class for lesser taxation (*i. e.*, at 10 cents per $100 for State purposes only) embraces bank deposits, stock in building and loan associations and live stock;

The second class for lesser taxation (*i. e.*, at 40 cents per $100 for State purposes only) embraces farm implements and farm machinery; raw products in the course of manufacture and machinery of those engaged in manufacturing, and **"money in hand, notes, bonds, accounts and other credits whether secured by mortgage, pledge or otherwise, or unsecured,"** and shares of stock in corporations not relieved from taxation because 25% of their property is located and taxable in Kentucky under Section 4088.

The third class for lesser taxation embraces agricultural products in storage (such products being exempt in the hands of the original producer for the first year), the taxation of which was limited to 40 cents for State purposes, 15 cents for county purposes and 15 cents for city purposes, per $100, or a total of 70 cents;

The fourth class embraces all other property not otherwise exempt or the local rates of tax thereon limited. Such property bears rates levied from year to year for the purposes of State, county, city and districts of schools, roads, drainage, etc., aggregating from $2.50 to $3.60 per $100 of valuation. In this fourth class, with the general mass of taxable property, were placed (of all the intangible personal property in the State, only) corporate franchises, shares of stock in banks and trust companies and shares in domestic life insurance companies.

For the sake of clearness we repeat that in the second class subject only to the State rate of 40 cents

per $100 and exempt from all other taxation is embraced "money in hand, notes, bonds, accounts and other credits whether secured by mortgage, pledge or otherwise, or unsecured," and "shares of stock not relieved from assessment under Section 4088 of this act" (that is shares of corporate stock where such corporations have not as much as 25% of their property located and taxed in Kentucky).

And Section 4019a-10 continues as to the second class:

> "provided, however, that nothing in this section shall forbid local taxation of franchises of corporations or of the shares of banks and trust companies doing business in Kentucky or domestic life insurance companies.
>
> "And provided further every State bank and trust company incorporated under the laws of this Commonwealth and every national bank doing business therein and located in any county, city, town or taxing district in this Commonwealth, shall make to the assessing officer of the county, city, town or taxing district, a report showing the following facts * * *."

And as to banks the provision was and is Kentucky Statutes, Section 4092, as follows:

> "in addition thereto the said banks and trust companies shall pay to the local authorities in said counties, cities, towns and taxing districts taxes at the same rate imposed upon other personal property therein."

The provisions of Kentucky Statutes, Section 4019a-10, further provide for the reports and taxation of bank shares in provisions twice as long as all the other provisions classifying property. Therefore, no unintentional or casual discrimination in the taxation of bank shares can be assumed.

That bank shares were not omitted by the General Assembly from local taxation must be admitted but that the State Tax Commission evidently thought, when it inaugurated the new tax system, that they should be omitted, by its contemporaneous and practical construction of the new law, to accord with the laws of the United States, is plain from the fact that the blanks prescribed by the State Tax Commission (R. 212, *et seq.*) did not include a schedule for the local taxation of bank shares.

The Court will observe that there are listed various items for State taxation such as:

> "1. Agricultural implements.
> 2. Manufacturing machinery.
> 3. Raw materials at plant.
> 4. Intangible property.
> 5. Agricultural products subject to county rate of 15 cents."

And also this statement:

> "Items in numbers 1, 2, 3 and 4 not subject to county taxation. Item No. 5 subject to a county rate of 15 cents per $100."

The Court will also observe that in the corrected bills bank shares are listed as "**tangible** property other than live stock and poultry."

It is not surprising, therefore, that in many counties of the State bank shares were not discriminated against "as moneyed capital" until after this Court's decision in the Richmond bank case (June 6, 1921), 256 U. S. 635. Thereafter, in the summer of 1922, various county officials upon an examination of the Kentucky Statutes, believing that the local jurisdictions should have collected local taxes, made out "corrected" tax bills for the years 1919, 1920 and 1921, and included bank shares in the tax bills for 1922 (R. 95).

The suit at bar results from the attempted collection of back taxes on "corrected" tax bills for 1919, 1920 and 1921, on bank shares for those years and the original tax bill for the year 1922, against the plaintiff-in-error as the agent for its stockholders. It brought this suit upon the allegations above stated to enjoin the defendant Sheriff from the collection of such county taxes by summary process.

The defendant's answer traversed the material allegations of the petition.

The plaintiff-in-error contended, and still contends, first, that when, by the Kentucky Statutes, **all moneyed capital** in the State, was exempted **from any local taxation,** excepting only shares of bank stock, against the owners thereof, there was, **as a matter of law,** an unlawful discrimination in violation of United States Revised Statutes, Section 5219; and, secondly, that **as a matter of fact,** in Scott County, Kentucky, and generally throughout the State, individual citizens employed moneyed capital in a material amount in competition with the investments of national bank share-

holders and the Circuit Court so found and held, but the Court of Appeals found no competition either in law or in fact in view of the Congressional Amendment of March 4, 1923, of United States Revised Statutes, Section 5219.

The Revised Statutes, Section 5219, as it originally existed and as amended, are printed in parallel columns in the appendix hereto (p. 76).

Under the Kentucky law the State Tax Commission prescribed the forms for reports of taxpayers and the terms of the bills to be sent to taxpayers by assessing officers (Kentucky Statutes, Section 4114i-11). The reports made by the taxpayers are not in detail as to the nature of their investments but only under general heads, and even these are confidential (Kentucky Statutes, Section 4114i-13), and can only be produced in evidence upon a Court order for a **subpoena duces tecum,** which was obtained in the case at bar (R. 21) against the Secretary of the State Tax Commission to produce the individual lists of the taxpayers in Scott County, Kentucky, reporting intangible personal property for taxation.

These individual lists tabulated under the prescribed headings on the forms for the taxpayers' reports are, by the Secretary of the State Tax Commission, shown for Scott County, Kentucky, as follows (R. 39 to 51):

296 citizens or firms reported taxable intangible personal property in Scott County, Kentucky. These reports disclose that they so reported:

Bonds	$188,280.00
Stock in corporations	38,450.00
Secured notes	1,060,726.00
Unsecured notes	159,111.00
Accounts	74,760.00
Other intangibles (choses in action)	18,917.00
Total	$1,540,244.00

The evidence clearly shows that under the system of taxing intangible personal property in Kentucky only about 30% to 40% thereof is found in the assessment rolls. (Hambrick, R. 58; Abbott, R. 77; Nichols, R. 80, 81. See, also: L. & N. R. R. Co. v. Bosworth, 209 Fed. 380, 459; L. & N. R. R. Co. v. Bosworth, 230 Fed. 191, 229. Affirmed 244 U. S. 522.)

The evidence also shows that the total value of the shares of stock of all the banks in Scott County, Kentucky, was $539,466.00

In which was included the valuation of the shares of stock of the plaintiff-in-error of $144,772.95

That for the State, all the counties, it was shown all taxable reported intangible personal property, exclusive of bank shares, was assessed at $309,704,155.00

And the total valuation of the shares of stock of all the banks and trust companies in Kentucky was $64,183,735.00

In the testimony of the Secretary of the State Tax Commission all of the totals of these items are given

in detail **as to each county of the State** (R. 123 to 126), from which it appears that on the average the reported taxable intangible personalty (of firms and individual citizens using moneyed capital), is approximately **five times as great** as the total valuation of shares of stock in banks. All of the former property is taxed at only 40 cents per $100, and all of the bank's shares are proposed to be taxed at from $2.70 to $3.60 per $100—a discrimination of about 700% to 900%.

It will be noted that of the taxable intangible personal property in the hands of individual citizens and firms of Scott County, Kentucky, $1,408,177 out of $1,540,244 is represented by **bonds, secured notes and unsecured notes,** which are clearly moneyed capital, and the testimony to be considered later shows that at least $500,000 of the secured notes (R. 96-98) and at least $112,300 of the unsecured notes (R. 91, 93), were known to be investments or loans made by bank customers to bank customers and the very class of investments which the banks were making and seeking.

Five experienced bank executive officers, one from each of the five banks in Scott County, Kentucky, testified that all the banks of Scott County invested large amounts and a large proportion of their funds in mortgages and purchase lien notes; that the competition of individual citizens of the county constantly in the market for such securities was serious and material; and that the individual citizens' investments of their moneyed capital in such securities in that county represented as much as the total of any two banks in the county.

See testimony of:

G. T. Hambrick, Vice President and Cashier of plaintiff-in-error, in the banking business for 25 years (R. 58, 90, 91);

W. A. Hinton, 51 years of age, Cashier Farmers Deposit Bank, Sadieville (R. 75);

W. G. Abbott, Cashier First National Bank, Georgetown, for 34 years (R. 77);

C. B. Roberts, Cashier Citizens Bank of Stamping Ground for 26 years (R. 79);

John C. Nichols, 38 years of age, Cashier Farmers Bank & Trust Co. of Georgetown and connected with the same institution since 1907 (R. 81, 93).

This testimony is reviewed below (p. 41) under the sixth assignment of error.

II.

SECOND AND FOURTH ASSIGNMENT OF ERRORS.

That Kentucky Statutes 4019a-19 is void because in contravention of United States Revised Statutes 5219, notwithstanding the Court of Appeals of Kentucky held such State law valid and the Court erred in its interpretation thereof.

In view of this Court's decision in Boyer v. Boyer, 113 U. S. 689, and its recent decisions in Merchants National Bank of Richmond v. City of Richmond, 256 U. S. 635, and First National Bank of Guthrie Center v. Anderson (Jan. 4, 1926), 46 Supreme Court Rep. 135, it would seem unnecessary to review previous decisions, construing United States Revised Statutes, Section 5219, which so far as pertinent to this case pro-

vides, in granting authority to the States to tax the shares of stock of national banks:

> "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

However, the statement of Mr. Justice Miller for this Court in People v. Weaver, 100 U. S. 539, 543, clearly shows the purpose of Congress to anticipate and prevent just such discriminatory taxation as is sought to be imposed upon bank shares in Kentucky, wherein it was said:

> "That the provision which we have cited was necessary to authorize the State to impose any tax whatever on these bank shares, is abundantly established by the cases of McCulloch v. Md., Osborn v. Bank, Weston v. Charleston.
>
> "As Congress was conferring a power on the States which they would not otherwise have had, to tax these shares, it undertook to impose a restriction on the exercise of that power, manifestly designed to prevent taxation which should discriminate against this class of property as compared with other moneyed capital. In permitting the State to tax these shares, it was foreseen—the cases we have cited from our former decisions showed too clearly—that the State authorities might be disposed to tax the capital invested in these banks oppressively."

As to what was meant by moneyed capital in the hands of individual citizens, this Court in the Richmond case quotes with approval Evansville Bank v. Britton, 105 U. S. 322, 324, as follows:

> "**Credits, money loaned at interest and demands against persons or corporations, are more purely representative of moneyed capital** than personal property so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital. **But the rights, credits, demands, and money at interest,** mentioned in the Indiana statute, from which bona fide debts **may be deducted, all mean moneyed capital** invested in that way."

This Court in the Richmond case also quotes with approval Mercantile Bank v. New York, 121 U. S. 138, as follows:

> "The terms of the act of Congress therefore include shares of stock or other interest owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes **money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character or temporarily with a view** to re-payment and reinvestment. In this way the moneyed capital in

(The black-face throughout the brief, unless otherwise noted, are our own.)

the hands of individuals is distinguished from what is known generally as personal property."

In the Richmond case, 256 U. S. 635, the Court, after reviewing the authorities, concludes, page 638:

> "By repeated decisions of this Court dealing with the restriction here imposed, it has become established that while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations, and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, **but investments of individuals in securities that represent money at interest, and other evidences of indebtedness such as normally enter into the business of banking.**"

And continues as follows, page 641:

> "No decision of this Court to which our attention is called has qualified that rule, or construed section 5219 as leaving out of consideration the rate of State taxation imposed upon **moneyed capital in the hands of individual citizens invested in loans or in securities for the payment of money, either for permanent or temporary purposes, where such moneyed capital comes into competition with that of national banks.**"

In the case of First National Bank of Guthrie Center v. Anderson, County Auditor (decided Jan. 4, 1926), 46 Supreme Court Reporter, 135, this Court, after re-

view, in part, of its summary of previous decisions construing Section 5219, said:

> "The term 'other moneyed capital,' in the restriction, is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. Mercantile National Bank v. New York, supra, 157; Aberdeen Bank v. Chehalis County, 166 U. S. 440, 461, 17 S. Ct. 629, 41 L. Ed. 1069.
>
> "Moneyed capital is brought into such competition where it is invested in shares of state banks or in private banking, and also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment. Mercantile National Bank v. New York, supra, 155, 157; Palmer v. McMahon, 133 U. S. 660, 667, 668, 10 S. Ct. 324, ss L. Ed. 772; Talbot v. Silver Bow County, 139 U. S. 438, 447, 11 S. Ct. 594, 35 L. Ed. 210.
>
> "The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. **But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction.** People v. Weaver,

100 U. S. 539, 25 L. Ed. 705; Boyer v. Boyer, 113 U. S. 689, 701, 5 S. Ct. 706, 28 L. Ed. 1089; National Bank of Wellington v. Chapman, 173 U. S. 205, 216, 19 S. Ct. 407, 43 L. Ed. 669."

From the foregoing it must be apparent that **when all stocks, bonds, secured notes and unsecured notes,** in the hands of individual citizens and firms in Kentucky are exempted from any local taxation, and only bank shares and the shares in domestic life insurance companies and corporate franchises are subjected to all local taxation, that there is a "clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks."

A review of this Court's decisions leads to the conclusion that where, by State law, all money capital in the hands of individual citizens is exempted from local taxation, and there is excepted from such class only bank shares, or where on the face of the State law moneyed capital of individual citizens is given a preference over investors in national bank shares, such law is void without detailed proof as to the amount of the investments or the nature of the competition. These subjects are not discussed or considered by this Court where under one form of taxation the hostile discrimination appears on the face of the State law and is bound to be presumed to exist if U. S. Rev. Stat., Sec. 5219, is not meaningless in such cases.

People v. Weaver, 100 U. S. 529.
Supervisors v. Stanley, 105 U. S. 305.
Evansville Bank v. Britton, 105 U. S. 322.

Owensboro National Bank v. Owensboro, 173 U. S. 664.
Covington v. First National Bank, 198 U. S. 100.
Citizens National Bank v. Kentucky, 217 U. S. 443.

It is only in cases where the State law has provided either partial exemptions or, as to some forms of property preferential treatment, that this Court has found it necessary to consider whether or not there was a material amount of moneyed capital exempted and as to whether or not such exempted property was competitive. Cases falling in this class are those cited by the Kentucky Court of Appeals, of:

Hepburn v. The School Directors, 23 Wall. 480.
Mercantile Bank v. New York, 121 U. S. 138.
Bank of Redemption v. City of Boston, 125 U. S. 60.

In the Hepburn case this Court, at page 485, carefully pointed out:

"This is a partial exemption only."

In the Mercantile Bank case, at page 151, this Court, in considering the exempt class, carefully pointed out the partial exemption, and quoted the following words from the Hepburn case:

"It could not have been the intention of Congress to exempt bank shares from taxation **because some moneyed** capital was exempt."

The same partial exemption of some form of personal property was likewise under consideration in the other cases cited by the Court of Appeals, viz.:

Aberdeen Bank v. Chehalis, 166 U. S. 440.
First National Bank v. Ayers, 160 U. S. 640.

National Bank of Wellington v. Chapman, 173 U. S. 205.

To reach the conclusion that Kentucky Statutes, Section 4019a-10, was valid, the Court of Appeals cites and relies upon (R. 110-112) the cases cited below which can be generally classified and differentiated as follows:

(1) Where the alleged discrimination against bank shares consisted of a preferential rate on a class of property in which banks were not authorized to invest:

Jenkins v. Neff, 186 U. S. 230.
Talbott v. County Commissioners, 139 U. S. 438.

(2) Where the discrimination was alleged to exist because of a preferential exemption of some specified form of personal property:

Mercantile Bank v. New York, 121 U. S. 138.
Bank of Redemption v. City of Boston, 125 U. S. 60.
Hepburn v. The School Directors, 23 Wall. 480.

(3) Or where there was a failure to support the alleged discrimination by pleading or proof:

Aberdeen Bank v. Chehalis, 166 U. S. 440.
First National Bank v. Ayers, 160 U. S. 640.
National Bank of Wellington v. Chapman, 173 U. S. 205.

One or more cases in each of these three classes of cases, cited by the Kentucky Court of Appeals, has been reviewed and differentiated by this Court in Merchants National Bank v. Richmond, 256 U. S. 635-637;

and First National Bank of Guthrie Center v. Anderson, County Auditor, et al., 46 Supreme Court Reporter, 135, quoted from supra. They fall far short of justifying the discrimination against bank shares shown in the Kentucky laws.

In Boyer v. Boyer, 113 U. S. 689, this Court reversed the State Court which had upheld a statute of Pennsylvania subjecting national bank shares to local taxation but exempting a substantial part of other moneyed capital from local taxation. This case seems to be on "all fours" with the case at bar.

It is said, at page 692:

> "Whether the proposed taxation for **county** purposes of the plaintiff's shares of national bank stock is at a greater rate than is assessed for like purposes on other moneyed capital in the hands of individual citizens, is the single question upon which depends the affirmance or reversal of the judgment." (Court's black.)

After pointing out that certain moneyed capital or credits are exempt from local taxation this Court continued, page 699:

> "The burden of county taxation, imposed by the latter act, has, at all events, been removed from all bonds or certificates of loan issued by any railroad company incorporated by the State; from shares of stock in the hands of stockholders of any institution or company of the State which, in its corporate capacity, is liable to pay a tax into the State treasury under the act of 1859; from mortgages, judgments, and recognizances of every

kind; from moneys due or owing upon articles of agreement for the sale of real estate; from all loans however made by corporations which are taxable for State purposes when such corporations pay into the State treasury the required tax on such indebtedness."

After enumerating the classes of property exempt from local taxation by the Pennsylvania law, this Court said, page 701:

> "The exemptions in favor of other moneyed capital appear to be of such a substantial character in amount as to take the present case out of the operation of the rule that it is not absolute equality that is contemplated by the act of Congress; a rule which rests upon the ground that exact uniformity or equality of taxation cannot in the nature of things be expected or attained under any system. But as substantial equality is attainable, and is required by the supreme law of the land, in respect of State taxation of national bank shares, when the inequality is so palpable as to show that the discrimination against capital invested in such shares is serious, the courts have no discretion but to interfere."

And after reviewing its decision in Hepburn v. School Directors, 23 Wall. 480, this Court continued, page 694:

> "It is by no means an authority for the broad proposition that national bank shares may be subjected to local taxation **where a very material part, relatively,** of other moneyed capital in the hands of individual citizens, within the same jurisdiction

> or taxing district, is exempted from such taxation. Indeed, such an interpretation of the statutes might entirely defeat the purpose that induced Congress to confine State taxation of national bank shares within the limit of equality with other moneyed capital; for, it would enable the States to impose upon capital invested in such shares materially greater burdens than those to which other moneyed capital in individual hands is subjected."

It is to be further noted that the partial exemption under consideration in the Hepburn case was a form of investment not at that time permitted to national banks, *i. e.,* investments in real estate mortgages, purchase lien notes and the like, but since that decision, as stated in this Court's opinion in First National Bank of Guthrie Center v. Anderson, 46 Sup. Ct. Rep. 135:

> "The prohibition was partly withdrawn and much of that field was opened to such banks by Act Dec. 22, 1913, c. 6, sec. 24, 38 Stat. 273, and Act Sept. 7, 1916, c. 461, 39 Stat. 754 (Comp. St. sec. 9763)."

Yet the Court of Appeals lays great stress on the Hepburn case in considering the competition in purchase lien notes and mortgage loans as will be noted under V, Sixth Assignment of Errors (p. 41).

Therefore, it is submitted that detailed evidence was unnecessary and the Court of Appeals should have held Kentucky Statutes, Section 4019a-10, invalid insofar as it discriminates against national bank shares in attempting to make such shares only of moneyed

capital subject to local taxation in addition to the State taxation which is uniform on both classes.

III.

THIRD AND FIFTH ASSIGNMENT OF ERRORS.

The Court erred in holding that the Act of Congress approved March 4, 1923, as an amendment to Section 5219 was retroactive without legislative action by the State to make valid the collection of taxes previously assessed.

Two views were presented in the lower court.

First, that the Act of Congress was permissive for State legislation to re-enact State laws to conform to the amendment even though such laws might be made retroactive; and

Second, that without legislative action the Sheriff of the county, as an administrative officer of the State charged with the collection of taxes, could represent the State and collect any taxes previously levied and assessed if such taxes could be assessed, levied and collected by the State after the amendment.

Assuming that the amendment of March 4, 1923, to section 5219, extended the State's power to tax national bank shares (which we do not concede but contend the amendment was merely declaratory of the previous law as construed by this Court), the question arises upon the fourth section of the amendment reading as follows:

> "The provisions of section 5219 of the Revised Statutes of the United States as heretofore in

force shall not prevent the legalizing, ratifying, or confirming **by the States** of any tax heretofore paid, levied or assessed upon the shares of national banks or the collection thereof to the extent that such tax would be valid under said section."

Notwithstanding the views expressed by District Judge Elliott for the Southern District of South Dakota in Minnehaha National Bank v. Anderson, 2 Fed. (2d) 897, 902, construing the amendment as being purely prospective and permissive, the Court of Appeals of Kentucky took the second view, i. e., that the amendment was intended to liberalize the State's rights as construed by this Court in the Richmond case, 256 U. S. 635, supra, and with reference thereto said:

"After the decision was entered the Congress of the United States passed the following act amending section 5219 of the Revised Statutes" (R. 111).

The amendatory act is then quoted in full and the Court continues (R. 113):

"The plain purpose of the Act of Congress, approved March 4, 1923, was to remove the uncertainty following the decision of the U. S. Supreme Court in the Virginia case above referred to. To that end it was expressly provided in the Act that 'bonds, notes and other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of

this section.' Under that Act the Kentucky Statute is valid. The 4th section of the Act was added to prevent further confusion in the collection of such taxes, whether levied before or after the passage of the Act. Among other things it expressly provides: 'The provisions of Sec. 5219 of the Revised Statutes of the U. S. as heretofore in force, shall not prevent the legalizing, ratifying or confirming by the States of any tax heretofore paid, levied or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section.' The words 'said section' must mean the section as amended by this Act; for else the words 'would be valid' are meaningless; the provision plainly refers to taxes which would be valid under the Act but might not be valid under the original Act. The states needed no authority to collect taxes properly levied under the old Act. The section was intended to give the power to collect taxes levied under the old Act, **if such levy was valid under the amended Act.** This is conclusively shown by the words 'legalizing, ratifying or confirming,' for there was no need to legalize, ratify or confirm previous levies if they were valid under the old statute. The State of Kentucky has ratified and confirmed the taxes heretofore levied and assessed **by collecting them.** This as we know from the current history of the state has been done for the years in question. **Its proceeding by the sheriff** to collect the taxes in question **was an act ratifying and confirming** the taxes theretofore levied and assessed and by the express words of the amendment, section 5219, 'shall not prevent * * * the

collecting thereof to the extent that such tax would be valid under said section.'

"We therefore conclude that the state statute is valid and that the state has authority to collect the taxes under it. There is no limitation upon the power of Congress to pass an Act of this character authorizing the state to collect taxes previously levied."

Though the opinion of the Court of Appeals of Kentucky does not cite the case, the only authority cited for such conclusion was U. S. v. Heinzer, 206 U. S. 370, in which this Court upheld a retroactive law of Congress for the Philippine tariffs to sustain the validity of action taken by administrative officers after their action had been held invalid. The ground of the decision was that a principal—the United States—had authority to ratify powers previously exercised by its agent, the collecting officers.

This case we submit is no authority for the proposition that where the laws of a State are invalid under an existing Federal statute, such State laws will be revived by a Congressional act removing the limitation upon the State's power. Congress cannot legislate for a State and State legislative action must be presumed to have been taken and the rights of parties determined in view of the existing law. This is illustrated by the fact that when, by virtue of suits pending to collect back taxes from the banks, the Kentucky Legislature's attention was called to the situation, it did not re-enact the old law, nor pass a law with retroactive effect to amend and support its former law. On the contrary

the Legislature of Kentucky endeavored to find an acceptable compromise between the State's previous law, and the Act of Congress and passed a law approved March 14, 1924 (Appendix, p. 75), classifying bank shares so that the local rates were limited to 20 cents for counties, 20 cents for cities and 40 cents for schools in addition to the State rate. Certainly nothing could more clearly illustrate that the Legislature did not intend to remedy previous defects in the law or pass a law making valid retroactively any laws previously passed which were invalid under the laws of the United States.

Nevertheless the Court of Appeals of Kentucky rejected the interpretation of District Judge Elliott in Minnehaha National Bank v. Anderson, 2 Fed (2d) 897, wherein he said, in a case similar to that at bar:

> "As applied to the case at bar I think a fair interpretation of this amendment is that South Dakota's laws in regard to taxing of national bank stock is illegal and exceeded the limitation prescribed by section 5219, Rev. Stat., U. S., as it existed prior to the amendment."

Just preceding the last quotation it had been said:

> "This amendment is not retroactive. The last provision, subdivision 4, conclusively determines that it was not intended to be retroactive."

And, again:

> "Congress * * * by this amendment provided in effect, as I construe it, that the State of Dakota might pass a curative act subjecting the

complainant to the tax of three mills, the same as other moneys named in section 5219, Rev. Stat., U. S. * * *

"The State of South Dakota was thereby given the power, to confirm or ratify any tax theretofore levied upon the complainant to the extent of 3 mills, the amount that would be valid under the construction given Section 5219, as theretofore in force.

"It is urged that this subdivision 4, of the amendment of 1923, to the United States statutes, amounts to a curative act of all past taxes whether legal or illegal under that section. I am of the opinion that if that had been the intention of Congress, it would have been its plain duty to say so. I cannot find by a fair interpretation of this language any such intent on the part of Congress."

The decision of the Court of Appeals in the case at bar was called to the attention of the Supreme Court of Minnesota in the case of State v. First National Bank of St. Paul, 204 N. W. 874, and that Court dismissed the argument of the Court of Appeals of Kentucky, in the following summary way, page 880:

"Plaintiff calls our attention to McFarland v. Georgetown National Bank, 270 S. W. 995, in which the Kentucky Court construed the provision last quoted as legalizing prior taxes which would be valid under section 5219 as amended by the proviso above quoted, but were invalid under that section as it stood when the tax was levied. We are unable to concur in this construction."

Therefore, we submit that for the taxes retroactively levied on bank shares for the years 1919 to 1922, based upon assessments made as of July 1st previous to each year, the Court of Appeals was in error in deciding that the Act of March 4, 1923, had any application without legislative action, and that a sheriff of the county upon merely receiving "corrected" tax bills issued by a county clerk for previous years could determine the policy of the State without legislative action to that effect.

That the Court of Appeals of Kentucky likewise erred in assuming that the amendment of March 4, 1923, materially enlarged U. S. Rev. Stat. 5219, is indicated by this Court's opinion in First National Bank of Guthrie Center v. Anderson, County Auditor, 46 Sup. Ct. Rep. 135, 139, wherein it was said:

> "The defendants say that this reenactment was intended as a legislative interpretation of the prior restriction, and that the proceedings resulting in its adoption so show. But, assuming that this is true, the situation is not changed; for the reenactment did no more than to put into express words that which, according to repeated decisions of this court, was implied before. * * * What bearing a different legislative interpretation might have on a tax already levied, as here, **need not be considered.**"

In view of this Court's decision in Duplex Printing Co. v. Deering, 254 U. S. 443, 474, 475, we think we are justified in quoting the language of Chairman McFadden of the House Committee in charge of this amend-

ment, who, in explaining a proposed further amendment to U. S. Rev. Stat., Sec. 5219, explained the purpose of Congress in passing the amendment in question.

It is shown by the Congressional Record of March 23, 1926, page 5869, that the following occurred:

> "Mr. Moors of Virginia. Will the gentleman **explain** exactly what the present law is before he comes to a discussion of this amendment?
>
> "Mr. McFadden. Yes; section 5219, as enacted in 1864 and substantially continued down to 1923 provided only one method for the taxation of national banks by the States, to wit, the inclusion of the shares 'in the valuation of the personal property of the owner or holder of such shares.' But that permission to the States was upon the condition that such taxation—
>
> > " 'Shall not be a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State.'
>
> "This restriction was construed in the Mercantile Bank case and in the prior decisions therein cited as only including moneyed capital in the hands of individual citizens directly or indirectly coming into competition with the business of national banks."

After quoting decisions from this Court construing the previous law, he continued:

> "Now, in 1923, because of the decision of the Supreme Court, known as the Richmond case, we, in 1923, passed an amendment, which amendment

codified the above holdings in the Mercantile and Richmond cases, as to the ad valorem taxation of national bank shares, with a proviso making it plain that the restriction, **as thus construed and applied,** did not apply to intangibles generally but only to those that normally enter into the business of national banks **in the sense of those decisions.** The act of March 4, 1923, in addition extended the powers of the States by providing two other alternative methods of taxation for the benefit of those States which had adopted income taxes as follows:

> "'(a) In the alternative, national bank shares dividends might be included in taxable income of individuals on a parity with other taxable income, or
>
> "'(b) National banks might be taxed directly upon net income to the extent that other corporations were taxed thereon.'
>
> "In other words, States could under the act of March 4, 1923, select one of the three above methods for taxing national banks or their shareholders."

It is, therefore, submitted that:

First, the amendment was not intended to extend the previous statute as construed by this Court and the Court of Appeals of Kentucky erred in assuming that it did do so.

Secondly, assuming that the amendment did extend the power of the States to tax national bank shares, it did not do so without curative legislation.

Therefore, as the Kentucky Court of Appeals assumed these false premises for its decision, and indicated that its judgment would be otherwise but for such premises, its judgment should be reversed.

IV.

FOURTH ASSIGNMENT OF ERRORS.

The Court erred in construing U. S. Rev. Stat. 5219.

It is settled, of course, that the shares in national banks as Federal fiscal agents can only be taxed to the extent and in the manner authorized by Congress.

People v. Weaver, 100 U. S. 539.
Merchants National Bank v. City of Richmond, 256 U. S. 635.
First National Bank of Guthrie Center v. Anderson, 46 Sup. Ct. Rep. 135.

We have submitted above (pages 26-34) that the amendment of March 4, 1923, to Section 5219 did not enlarge the powers of the State and was not retroactively self-executing, and that the decision of the Court of Appeals of Kentucky in the case at bar was based upon the assumption that said amendment enlarged the powers of the States in taxing national bank shares and was retroactive without State legislation.

The original law and amendment thereto are printed in parallel columns in the appendix (page 76). It seems necessary to consider the purpose of Congress in adopting this amendment. When the original law was adopted practically all of the States were under

a system of uniform ad valorem taxation. By modern development of State tax laws approximately 22 States follow the uniform ad valorem basis of taxation.*

Approximately 12 States have adopted a form of classifying property and applying uniform rates for the various classes.‡

Approximately 10 States have adopted an income taxation basis for personal property.†

In many States questions arose as to whether the shares of stock of national banks could be taxed at all where such shares were entitled to a classification rate less than that sought to be charged, or could be taxed at all in those States where no provision of the State law taxed the moneyed capital in the hands of individuals.

To meet the situation Congress deemed it appropriate to amend U. S. Rev. Stat., Section 5219, and by Clause (b) to codify the old statute as construed by this Court in permitting the ad valorem taxation of shares of national banks; by Clause (c) to provide for the taxation of the net income of national banking associations, and by Clause (d) to provide for the taxation of the dividends received by the stockholders of national bank shares.

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*Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Mississippi, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wyoming.

‡Arizona, Iowa, Kentucky, Maryland, Michigan, Minnesota, Montana, New Jersey, New Mexico, North Dakota, Oklahoma, Virginia.

†Delaware, Massachusetts, Missouri, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Virginia, Wisconsin.

In each of these classes and in the proposed class under a further amendment, very definite and specific bases of comparison are described to avoid any discrimination against investors in bank shares.

Therefore, it is not to be presumed that Congress has been indefinite in providing protection for investors in bank shares where the old system of ad valorem taxation or classification is followed and the tax is levied on the shares.

Under Clause (c) it will be noted that where a State taxes the income of an association, the tax rate shall not be higher than that assessed upon other financial corporations nor higher than the rates assessed upon the net income of "mercantile, manufacturing and busness corporations doing business within its limits."

Under Clause (d) it will be noted that where a State imposes an income tax upon the dividends of the shareholders of national banks, a certain basis of comparison is specified to prevent discrimination by words that such tax "shall not be at a higher rate than is assessed upon the income from other moneyed capital."

Certainly Congress did not mean to provide definite and easily applied standards of comparison to prevent discrimination against bank shares in the two new added sections (and in the proposed new section), but in the original section to make uncertain and indefinite the standard of protection to investors in bank shares where the States followed the ad valorem basis and imposed the tax on the shares of stock. Yet this is the conclusion which the Court of Appeals of Kentucky

reached in holding that unless the bank could prove directly "by evidence without dispute" that moneyed capital enjoying a lesser rate came into direct competition in a substantial amount, the State law might exempt all moneyed capital from local taxation and subject only bank shares and those in domestic life insurance companies to such taxation without violating the protection intended by Congress.

This conclusion was reached in view of the amendment of Clause (b) which added to the original words

> "the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

the following words:

> "coming into competition with the business of national banks; provided that bonds, notes or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

Certainly some basis of comparison was intended for the protection of national bank shareholders in those States following the ad valorem basis of taxing shares, just as was provided a definite basis for comparison where the income of the association was made taxable or the States were permitted to tax the dividends received by the stockholders in national banks.

It is certain from this Court's repeated decisions and the express finding in Merchants National Bank v. City of Richmond, 256 U. S. 635, 639, that Congress has not made the sole standard or basis of comparison the tax which the State might be willing to levy upon its own financial institutions, but, as repeatedly shown above, there must be considered, money at interest, credits and demands against persons or corporations held by individual citizens of the State, and also the money of individual citizens invested in loans or securities for the payment of money. The words "coming into competition" as used have never been limited to mean, as was assumed in the case at bar, actual bidding on a particular security desired by the bank but moneyed capital of individual citizens used in the market in general for investment in securities similar to national bank shares and what the proceeds of such shares are invested in in the normal course of the banking business.

As shown above (p. 11, *et seq.*) where the State law exempts **all** moneyed capital, under an ad valorem system of taxation, from local taxation, and subjects only bank shares and the shares in domestic life insurance companies and corporate franchises as intangible personal property to such local taxation, there is a discrimination on the face of the law, and it is not necessary to consider the materiality of the amount exempted or to prove the exact items of such moneyed capital coming into competition with the investors in bank shares or the investment of the proceeds thereof in the usual course of banking.

The Court of Appeals of Kentucky seems to have interpreted the amended Act to mean that no investment of individual citizens of a State, in bonds, notes or other evidences of indebtedness may be considered in determining whether there is discrimination against the taxation of shareholders in national banks. Such construction of the Act of Congress renders the clause meaningless—especially in a State where **all forms** of intangible property of all citizens and firms in the State are given a preferential classification and are required to pay only from 1/7 to 1/9 of the tax rate sought to be imposed on national bank shareholders.

Certainly such a State law could not be valid in one-half of the counties of the State and invalid in the other half of such counties; or valid in one city of a county and invalid in another city of the county. To so construe the protection intended to be afforded to national banks where the States follow the ad valorem classification laws and tax shares directly, would make the clause meaningless and ineffectual, whereas, as above pointed out, Congress has adopted for comparison in the taxation of national banks definite standards in every other instance, and such must be presumed to have been the purpose of the section under consideration.

Therefore, it is submitted that when it is shown that by the State law **all** intangible personal property in the State representing five times as much as the total valuation of all bank shares, is exempt from all local taxation and only bank shares and stock in domestic life insurance companies and corporate franchises are

made subject to local taxation, that hostile discrimination is established as **a matter of law**; or if this be not true, as we believe it is, that in the instant case the record establishes that **as a matter of fact** there is actual discrimination in a material amount in favor of competing capital in Scott County, Ky., and in the State of Kentucky, as we will next consider.

V.

SIXTH ASSIGNMENT OF ERRORS.

The Court flagrantly erred in its finding of facts as to competition of other moneyed capital with national bank shares.

The Court of Appeals, to sustain its conclusion, found facts which it is respectfully submitted are not supported by the record, nor, as assumed by it, based upon common knowledge. The sixth assignment of errors as to the facts is given in detail in the appendix (p. 81).

We assume that this Court, where a Federal question is involved, has full authority to reconsider the record and assumed facts. In support of this conclusion we need only cite Mr. Chief Justice Taft's opinion, and the cases therein cited, in Truax v. Corrigan, 257 U. S. 312, 324, where it is said:

> "The facts alleged are admitted by the demurrer and in determining their legal effect as a deprivation of plaintiffs' legal rights under the Fourteenth Amendment, we are at as full liberty to consider them as was the State Supreme Court. Mackay v. Dillon, 4 How. 421; Dower v. Richards,

151 U. S. 658, 667. Nor does the court's declaration that the statute is a rule of evidence bind us in such an investigation. Bailey v. Alabama, 219 U. S. 219, 238, 239; Chicago, Milwaukee & St. Paul Ry. Co. v. Minnesota, 134 U. S. 418; Mugler v. Kansas, 123 U. S. 623, 661; Corn Products Refining Co. v. Eddy, 249 U. S. 427, 432. In cases brought to this court from state courts for review, on the ground that a federal right set up in the state court has been wrongly denied, and in which the state court has put its decision on a finding that the asserted federal right has no basis in point of fact or has been waived or lost, this court as an incident of its power to determine whether a federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here. Kansas City Southern Ry. Co. v. Albers Commission Co., 223 U. S. 573, 591, 593; Cedar Rapids Gas Light Co. v. Cedar Rapids, 223 U. S. 656, 668, 669; Southern Pacific Co. v. Schuler, 227 U. S. 601, 611. Another class of cases in which this court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question to analyze the facts. Northern Pacific Co. v. North Dakota, 236 U. S. 585, 593; Jones National Bank v. Yates, 240 U. S. 541, 552, 553. In view of these decisions and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by

demurrer, violates the Federal Constitution, this Court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the State Supreme Court in this regard. The only respect in such a case in which this court is bound by the judgment of the State Supreme Court is in the construction which that court puts upon the statute."

The Court of Appeals of Kentucky, after assuming that the amendment to Section 5219 had liberalized the State powers and was retroactive without State legislative action, and that under this Court's decisions various kinds of property might be exempted or given preferential rates without the right of complaint by national bank shareholders, then proceeded to find the facts to accord with these views, as follows (R. 112):

"In this case it is not shown by evidence **without dispute** that the moneyed capital in the hands of individuals invested in bonds, notes and other evidences of indebtedness comes in competition with the national banks. While a number of witnesses so testify, there is testimony to the contrary and the conclusion of the witnesses testifying to the existence of competition is not borne out by the facts shown by all the testimony. It is shown by all the testimony that the banks make short time loans and that they decline to make loans on long time. It is also shown that the banks are lending to the limit and are rediscounting their paper in order to accommodate customers for a large part of the year. The moneyed capital of individuals is invested in notes given for the purchase money of land or secured by a mortgage on land and running

for a longer time than banks are willing to lend money for. It is not shown by anybody that any appreciable amount of money held by individuals is used in short time loans, such as the banks make, and this being true, the capital invested in land notes and the like does not come in competition with the national banks, for they do not handle this character of paper. The facts shown by the record warrant the conclusion that no material part of the capital held by the individuals is so invested as to come in competition with the national banks and on the record we so hold."

1. Sixth Assignment of Errors (a) (R. 116). The case at bar is the only case we have discovered where in weighing and considering the evidence the Court deemed it necessary that a party should establish its cause "by evidence without dispute."

The rule in Kentucky, as elsewhere, is that rights are determined by the weight of the evidence and that the Appellate Court will not reverse the finding of facts by the Chancellor (R. 31) as the court did in this case, unless he was clearly unsupported by the evidence. Emberger v. Commonwealth, 208 Ky. 782; Dotson v. Hunt, 207 Ky. 832.

2. Sixth Assignment of Errors (c) (R. 116). The Court in part based its conclusion upon the following sentences:

> "It is shown by all the testimony that the banks make short time loans and that they decline to make loans on long time. It is also shown that the banks are lending to the limit and are rediscounting their paper in order to accommodate customers for a large part of the year."

This quotation embraces a question of fact and a question of law. It cannot be true, as a matter of law, that a State law is valid or invalid according to whether the banks of the county have been able to make some or a large amount of loans in competition with individual citizens or have been unable to make any loans because of such competition. It cannot be the province of a State Court to determine in what class of authorized investments national banks shall invest, or to consider whether at some time of the year national banks are availing themselves of their charter powers to borrow money or to rediscount with the Federal Reserve Bank. A great deal of the cross-examination by the defendants was to show that at some time of the year the banks borrowed money or rediscounted with the Federal Reserve. From this it was argued that if some banks obtained a fair share, no question of competition could be material. (R. 65, 67, 70, 72, 73, 85, 86, 100, 101.) Neither the statutes nor decisions justify such limitation on the meaning of competition. Newport National Bank v. Board of Education, 114 Ky. 87, 91.

We will not burden this brief by lengthy quotations to show that the conclusion of the Court is not sustained by the evidence, but comment that the record shows that while the banks do at some period borrow, none of them have reached their limit, and it is not the province of the Court to undertake to determine in what character of investments or in how much thereof a bank shall invest. The overwhelming testimony shows that the loans and purchases by numerous individuals are made in competition with the banks, of notes and

mortgages desired and invested in by the banks; that they seek them to establish relations and that they are profitable, as we will hereafter point out.

3. Sixth Assignment of Errors, sub (b), (d) and (e) (R. 116). The Court of Appeals makes these findings of facts, which may be considered together:

> "It is shown by all the testimony that the banks make short time loans and that they decline to make long time loans."
>
> "the moneyed capital of individuals is invested in notes given for the purchase money of land or secured by a mortgage on land and running for a longer time than banks are willing to lend money for * * *."
>
> "it is not shown by anybody that any appreciable amount of money held by individuals is used in short time loans, such as the banks make, and this being true, the investment in land notes and the like does not come in competition with the national banks, for they do not handle that character of paper."

From the foregoing it is apparent that the Court in substance finds the facts as follows:

1. That banks make only short time loans.

2. That banks do not invest in purchase lien notes or mortgages.

3. That individuals loan or invest only in long time notes.

4. That, therefore, there is no competition.

As we believe all of these findings are contrary to the great preponderance of the testimony, we are compelled to quote from the testimony extensively. How-

ever, we will indicate upon the margin of the quotations that contrary to the findings under the designations for 1. and 2. "bank loans" and for 3. and 4. "competition" and similar syllabi. From this we believe it will be apparent how far the Court erred in stating the effect of "all the testimony" and as to what "is not shown by anybody."

We have shown above (pp. 12-13) from the testimony of Ben Marshall, Secretary of the Kentucky State Tax Commission, that in Scott County, Kentucky, there were loans and investments by individual citizens of Scott County reported for taxation consisting of, secured notes $1,060,726; unsecured notes $159,111; and taxable bonds $188,280; and that, in the opinion of all the witnesses, owing to the difficulty of discovering intangibles, such property reported for taxation by individuals does not represent more than 25% to 40% of that actually subject to taxation in the county. (R. 58, 77, 80, 81.)

We have shown above that the total investment in bank shares in the county was $539,466, or approximately one-third of the loans and investments taxed to individuals.

We have shown that by counties in the State of Kentucky the aggregate reported taxable intangible personal property, exclusive of bank shares, was $309,407,155; and the total valuation of all shares of banks and trust companies in Kentucky was $64,183,735; *i. e.*, approximately five times as much was taxed to individuals as the total valuation of all the shares of banks and trust companies.

Now we must consider the direct testimony.

(A) **G. T. Hambrick, Cashier** of plaintiff-in-error, testified (R. 57) that his bank had invested in real estate mortgage paper $170,142.60; in collateral paper $35,773.82; in secured paper $806,574; the latter including investments in purchase lien notes.

Bank Loans

Asked as to whether the items enumerated by the Secretary of the State Tax Commission as being held by individuals were such securities as the bank invested in, and whether there was competition for such securities, the witness testified (R. 58):

"A. Banks make money, for its shareholders in two ways. By loans to individuals, firms and corporations, and by investing its funds in bonds and other securities. Banks loan on real estate mortgages, loans secured by collateral, and loans secured by personal securities. Banks invest in Government, Railroad, Industrial Bonds, State, County and Municipal bonds, State warrants, county warrants, and city warrants. **Now the individual takes up a large per cent of the high rate paper, thus forcing banks to keep their surplus funds on deposit with their city correspondents,** on which they receive interest at the rate of two and a half to three per cent. He forces them to employ their funds in investment of lower rate securities, such as Government bonds and Treasury certificates. Individuals loaning money operate in two or three ways against the interest of banks. Not only taking investments from the banks, but withdrawn funds on deposit, thereby lessening the earning powers of the bank.

Bank Loans

Competition

"When an individual loans his money, the borrower feels no obligation to do business with any

particular bank, whereas when a bank makes a loan it forms a tie between the individual and the loaning bank, thereby increasing the bank's business. **I have known cases where individuals have made loans at a smaller rate of interest than was being charged by the banks, and borrowers would get their money from individuals and pay the bank and in many instances this very money was withdrawn from the bank whose loan was paid off.** Competition

"The individual lender has no operating expenses, whereas the overhead of banks amount to a very large sum. For instance in the case of the Georgetown National Bank, the expenses of this bank, irrespective of taxes, and interest paid on deposits, amounts to at least twenty per cent of the par value of the capital stock, and the taxes amount to about seven per cent of the par value of the capital stock."

On cross-examination (R. 63) he was asked:

"Q. Have you at any time been unable to secure such of these vendor's lien paper that you wanted by reason of the individual competitor preventing you from getting it; if so designate what ones?

A. I do not remember just when, but I know there have been a number of good loans which the bank would have liked to have had, which individuals had taken up."

He was cross-examined (R. 66) as to the length of time real estate paper ran before maturity, and stated it ran various lengths of time, and was pressed as to whether or not his bank desired the long term paper, and he answered (R. 66):

"On three or five years, no, sir. **But I would like to add that the loans in the hands of individuals are not all long time loans** running from three to five years, but **a great many loans from six to twelve months are held by individuals.**"

He testified (R. 69) that banks preferred purchase lien notes to straight mortgages, but were unable to secure them. He was then asked:

"Q. You were asked as to the length of time—paper was mentioned as three to five years; I will ask you what percentage of paper is ever presented to your bank that is over three years in time of payment?

A. A very, very small per cent.

Q. Is it even as much as one per cent in your opinion. of the paper you handle?

A. I should say not.

Q. Is it not a fact that a great majority of the paper presented, I do not mean such as you actually handle, but a great majority presented to you for handling, is six, twelve, eighteen and twenty-four months?

A. Yes, sir, that is about the usual length of time.

Q. Is not a great majority of it six and twelve months' paper?

A. Yes, sir."

The witness was cross-examined as to the unsecured notes listed in the schedule filed by Ben Marshall, Secretary of the State Tax Commission, and stated that he knew the borrowers and in many instances the lenders, but he was then asked (R. 71):

"State whose names are on the paper, the terms of the paper and what interest they bear, and when the loan was made, if you know?"

Fallacious Bases of "Competition"

After stating he could not give details, he was asked:

"Q. Therefore, you cannot testify under oath as to the character, terms, maturity, date, or any of the features which determine the desirability of any of these notes listed in Mr. Marshall's report of the notes taxed as being in the hands of individuals.

A. No, sir."

The witness had already testified he knew of the character of the notes and the lenders and the borrowers, and upon further reflection testified (R. 90):

"Q. You have heretofore stated that there were men—individuals in the County of Scott who loaned money in the same methods practically as the bank does. I wish you would give specific examples without giving the names of persons engaged in the business of loaning money buying notes and discounting them, etc. That is in the year 1921?

Specific Cases of Competitive Loans

A. **I have before me a list of parties who loaned money the same as the banks.** I have five parties whom **I know made loans** in the year 1921, in the aggregate amount of $87,800.00.

Q. Take the first one you have on the list, how much did he loan in that year?

A. The first one I have **loaned money to three parties,** a total of $33,000.00.

Q. The second one?

A. **Loaned to five men** a total of $24,800.00.

Q. The third?

A. **To two men,** a total of $20,000.00, the fourth made one loan of four thousand dollars, the fifth one loan of six thousand dollars.

Q. **Were these loans that they made, the paper they handled, the same kind of paper the bank handles?**

A. **Yes, sir, the same kind of paper the bank handles.**

Q. Do you know the names of the individuals to whom they loaned the money?

A. Yes, sir.

Q. **Were they such notes as the bank would handle?**

A. **Yes, sir, every one of them.**

Q. Does this list which you have presented in any wise represent the entire amount that has been loaned that you have knowledge of in that year, or just examples?

A. **Just examples, I am sure there is a good deal more. I should say four or five times that amount was loaned.**

Q. How did this information in regard to this come to you?

A. I have seen these notes.

Q. Did it come to you in the course of your banking business?

A. Yes, sir, in the course of our banking business.

Q. Do you want to disclose their names?

A. No, sir, I could not do that."

On cross-examination the witness testified (R. 91):

Specific Cases of Competitive Loans

"Q. What is your reason for not disclosing the names of these examples that you have in mind?

A. It is confidential business.

Q. In what way is it confidential—did the bank have any part in the transaction?

A. No, sir, not at all. I take it that the bank has no right to disclose the name of parties to whom their customers loan money, or the amount they loan.

Q. **Were these men who loaned this money depositors in your bank?**

A. **Most of them.**

Q. Do you know the details with reference to the loans you refer to?

A. How do you mean?

Q. As to the matter of fact whether they were loans or some other character of indebtedness?

A. **They were direct loans to the borrowers.**

Q. How do you know that?

A. **The notes show they are, and checks were given to the borrowers in a number of cases on our bank.**

Q. Have you custody of these notes?

A. No, sir.

Q. How did you happen to see the notes?

A. I saw some of them when they were given, and a number of them are in our safety deposit boxes.

Q. Did the bank in any of these cases secure these loans for these people?

A. No, sir.

Q. Did the bank, or any official of the bank, have anything to do with arranging or bringing about these loans or any of them.

A. No, sir, not a one of them.

Q. Were you consulted with reference to the character of these loans by any of the parties who made the loans?

A. I was in two instances.

Q. You recommended the loans to your customers?

A. I think the loans were made and then the notes shown to me and my opinion was asked regarding them.

Q. Were any of these persons **to whom these loans were made customers of your bank?**

A. **Yes, sir.**

Q. Did any of them apply to your bank to make the loan?

A. No, sir.

Q. Are they just personal notes, or notes secured by mortgage or vendor's lien?

A. All personal notes except two.

Q. What kind are they?

A. They are vendor's lien, purchased from the party who sold the real estate to the maker of the note.

Q. Are you able to state whether the bank desired these loans, and would have handled them at the time they were made by these individuals?

A. **We would."**

(B) **W. A. Hinton, Cashier of the Farmers Deposit Bank of Sadieville,** who has engaged in the business in Scott County since 1901, testified (R. 75) that his bank had invested in real estate mortgages $220,020, and in securities by personal sureties and other securities $203,382.14, making his total loans and discounts $423,402.14. He then testified:

Bank Loans

"Q. From your knowledge of bank conditions, and general money conditions in your neighborhood, do you consider that the individual investor in secured notes and unsecured notes, bonds, etc., comes into competition with your bank shares, and with the conduct of the business of your bank in that community?

A. Yes, sir.

Q. Do you consider that that competition on the part of individuals in your community is relatively large or small in amount? Competition

A. Large.

Q. From your knowledge of conditions there are investments of this kind made by individuals, would you say that this competition was substantially the same as if there were another bank operating in your community?

A. Yes, sir, almost the same."

(C) **W. G. Abbott, Cashier First National Bank, Georgetown,** testified (R. 77) that the total loans and discounts of his bank were $548,144.91; that this was invested in real estate mortgages to the amount of $78,691.63; in loans secured by stocks and bonds to the amount of $17,265.14; personal secured notes $446,-788.14; in other bonds and securities $92,573.52; and had on deposit with corresponding banks $75,466.54. Bank Loans

He was then asked (R. 77) if from his knowledge of the extent to which individuals loaned money in the county, either on secured or unsecured paper, he considered these individuals came into competition with his bank shares and the conduct of his banking business, he answered, "it certainly does," and continued:

Competition

"Q. Do you consider that such competition furnished by individuals as relatively large or small in amount?

A. Large.

Q. In your banking business, have you not had experience of a depositor taking money out of your bank for the purpose of taking up desirable loans held by your bank?

A. Yes, sir, I have.

Q. State whether or not that experience is frequent or the reverse?

A. Rather frequent. I have known it to happen very often.

Q. Now in the face of competition which has been noted by one of the other bankers, I will call your attention, and ask if it has come in your experience also, that is by individual investors absorbing a large amount of the high interest local paper, and local securities, and forcing your money to be invested in lower rates of interest, or forcing it to remain on deposit at a very much lower rate of interest. Is that true, or not, in your experience?

A. It is true, has been true in our bank.

Q. Since the tax rate on securities such as I have enumerated in the hands of individuals has been lowered to a total of forty cents for all purposes, state whether or not you have noticed an **increase in individuals to engage in the business of loaning money and purchasing securities?**

A. Yes, sir, there is an increase in it.

Q. Do you consider that that increase is a direct result of the lower tax rate on securities?

A. Yes, sir."

(D) **C. B. Roberts, Cashier Citizens Bank of Stamping Ground,** Scott County, since 1900, testified (R. 79) (filed Exhibit, R. 106) that his bank had invested in real estate mortgages $102,759.86; loaned on personal security $96,246.99; loaned on stocks and bonds $850; and had due from banks $21,150 out of his total resources of $234,000.00. Bank Loans

"Q. From your knowledge of money conditions in your community, and of money loaned by individuals generally in your community, state whether or not individuals making loans on unsecured notes or on notes secured by mortgage, or local securities or other kinds, in your opinion come into competition with your bank shares and with the conduct of the business of your bank? Competition

A. Yes, sir, very much so.

Q. In your opinion is this competition material or otherwise?

A. Yes, sir, it is very material.

Q. Where is your bank located?

A. Stamping Ground, Scott County, Kentucky.

Q. Is there any other bank in your immediate community?

A. No, sir.

Q. Suppose there were another bank located in your community of substantially the same size as yours, and individual competition were eliminated, do you think there would be any difference in the competition between such a bank and the individual competition as it now exists?

A. I do not think there would be any.

Q. If individual competition were eliminated in making such loans what effect do you think it would have on the earning capacity of your bank, and on the amount of dividend that you would be able to pay on your bank shares?

A. Suppose we were paying a six per cent dividend, I think it would increase the dividend to at least ten per cent."

(E) **J. C. Nichols, Cashier Farmers Bank & Trust Company, Georgetown,** testified (R. 80) that the total loans and discounts of his bank were $720,708.03, di-

Bank Loans

vided: loans secured by mortgage on real estate $348,463.68; loans secured by collateral $89,973.43; unsecured loans, or personal surety only, $288,270.93; bonds and securities held $200,558.41, and on deposit with corresponding banks $67,751.59. He was asked to consider the tabulated schedule of the Secretary of the State Tax Commission, showing the items above mentioned, and asked whether or not in his opinion the individual investors or lenders in bonds, secured notes and unsecured notes, came into competition with his bank shares and his banking business, and he answered (R. 81):

"My opinion is that it does create competition and serious competition as evidenced by the total

Competition

amount as shown by Mr. Marshall's statement which is $1,408,000.00 of bonds, and secured and unsecured notes. This amount is considerable in excess of the loans of any bank, national or state, in this county, and is also a larger amount than the investments of some two or possibly three of the smaller banks in our county. Particularly is

this true concerning mortgage paper in which our bank is a considerable purchaser, **and in many instances the lender of this money obtains the best and more marketable mortgage paper.** This money, in many instances, **has been withdrawn from deposit** in the Farmers Bank & Trust Company, and loaned to individuals, **who in turn pays off the loan to us."**

Asked how the competition affects his bank, he continued:

Competition

"In one way it prevents us from buying many mortgage loans, and in withdrawing money of the customer from the bank, thereby in two ways reducing the earnings of the bank. Again customers do business with a bank through one or two ways, either by reason of knowing some one intimately connected with the bank, or by the existence of loans and favors granted them. Usually an individual who has obtained a loan from a bank becomes a customer of that bank, thereby becoming an asset of the bank and a real friend. Becoming a customer in many instances becomes a saver. Through taking up these choice loans by the individual the bank is hindered considerably in its influence in a neighborhood through loaning its money, making its earnings and benefiting that community. **Also by the individual absorbing these select investments, the bank is forced to invest surplus funds in investments yielding a lower rate of interest,** such investments, as United States Bonds and Treasury notes, which yield from four to four and a half per cent per annum, state, county and city warrants, and other high class bonds. This lower rate means a reduction of earnings to

said bank. In some instances we have learned and seen **loans that have been made to our customers by individuals at a lower rate of interest than we charged, thereby having our loan paid off, and our earnings decreased.** * * *"

Continuing (R. 83) he said:

Competition

"Our bank makes mortgage loans in this community, the individual lender does the same. The bank loans money on collateral and the lending individual does the same. The bank loans its funds on high class, one named personal security notes, state and county warrants, the individual lender does the same. From the rapid increase of loans in the hands of the individual lenders, and **the severe competition created thereby, and the difference in tax rates,** and overhead expenses borne by the bank, **it has become a real menace to the banking interest,** and is limited only by the amount of money loaned by the individual before the bank is seriously handicapped in its line of business and influence in the community."

Being pressed to give a specific instance of persons lending on secured or unsecured paper as distinguished from mortgage bonds, he further testified (R. 93):

Specific Cases of Competitive Loans

"Q. Without giving their names will you give specific examples and the amount of the loans?

A. There were fourteen loans amounting to $24,500.00 by five individuals.

Q. Was that in the year 1921?

A. Yes, sir, 1921.

Q. Does that in any wise cover the amount of money loaned by individuals that came under

your observation as banker for that year, or just examples?

A. **Just examples and some I have definite knowledge of, definite remembrance of.**

Q. **Were these loans such loans as the bank would have handled?**

A. **In nearly every instance.**

Q. **Was it desirable paper from the banker's standpoint?**

A. **It was.**

Q. Did that actually come into competition with the bank's business?

A. It did in a way for some of the loans were made to people—**customers of our bank.**

Q. Did the information in regard to these loans come to you in a confidential relation as a banker?

A. It did.

Q. You have specific names and amounts in your mind when making that statement?

A. Yes, sir.

Q. Did your bank seek to make any of these loans?

A. No, sir.

Q. Did it make any effort to get any of these loans?

A. No, sir, they did not apply to the bank for them.

Q. The bank made no effort to secure these loans made by other people which you have testified to?

A. No, sir, **but the people to whom the money was loaned were in most instances our customers, and the people making the loans were our customers."**

From this testimony it appears the national banks in Scott County, Kentucky, have invested over $800,000 in mortgages, not counting purchase lien notes carried as secured notes. That 205 individual citizens of Scott County have loaned on or invested in mortgages and purchase lien notes reported for taxation over $1,060,000, and that at least half of this amount is in the hands of money lenders.

For argument, putting aside the direct testimony as to competition, we would like to inquire of counsel for defendant-in-error upon what doctrine of chance it could be assumed that all of 205 lenders of over $1,060,000 took only long-term mortgages and the five banks took over $800,000 of only short-term mortgages. The evidence is certainly to the contrary.

As to unsecured notes or secured only by personal endorsement it is shown that the banks have invested considerably over $1,000,000, and that 63 individual citizens of Scott County have reported for taxation $159,111 (which is shown by expert opinion to represent less than one-third of the total outstanding notes), so there must be over $468,000 thereof. It is shown by Hambrick and Nichols as mere illustrations that they know ten money lenders who loaned to 26 borrowers in the county $112,300 in notes which were good bankable paper and the total of such individual loans is, in the opinion of Hambrick, at least four or five times greater than the amount shown in the illustrations.

It is to be noted that by stipulation (R. 22) the testimony was limited to the year 1922 and

"it is hereby understood and agreed that the state of facts as shown to exist by the proof for the above mentioned year will be taken as indicative of the facts for the other years in question."

Therefore, the character of competition and the amount thereof shown for this year must be assumed to be continuous during the whole of the four years in controversy.

In addition to all of this it is shown that only three people reported taxable bonds, which is its self-corroboration of the omission of property from the tax rolls. However, these three individuals reported taxable bonds to the amount of $188,280, and certainly taxable bonds are competitive investment.

It is respectfully submitted that these proven facts show a great deal more than the facts recited by this Court in the case of Merchants National Bank v. Richmond, 256 U. S. 635, upon which it was said, at page 638:

> "**It is to be inferred that a substantial part of this aggregate** was in the hands of individual taxpayers; the precise amount does not appear."

Against this unanimous testimony the defendant introduced one witness, the County Clerk, who made out the "corrected" tax bills in litigation, viz., L. L. Calvert, 35 years old, who was formerly Deputy County Clerk, and served as Assistant Cashier of the Citizens Bank of Stamping Ground from 1914 to 1916, and for about three years was a director in the First National Bank of Georgetown. His testimony is directed chiefly to the fallacious theory that it was necessary for the

plaintiff-in-error to prove actual direct competition with some specified lender of money for each particular loan.

As the Court of Appeals seems to have largely been influenced by his testimony and the argument thereon and his reason is so apparently fallacious, we quote from it without further comment.

Calvert testified (R. 96):

> "Q. From your experience as a banker in this county, and from your knowledge drawn from your official duties in the County Clerk's office, and in banking, I will ask you to state whether or not in your opinion, the loans made by individual owners in this county as disclosed by this record comes into material competition with the bank, and state your reasons for your opinion?
>
> A. No, sir—my reasons are, in the first place, that some of the loans made by individuals are loans which the bank refuses, and others are lien notes held direct by parties on land which they have sold, and for the further reason that my observation of banks in this county has been that the banks can loan practically their limit during any time or nearly so.
>
> Q. I will ask you whether or not it is true, to your knowledge, that the banks of the county are frequently seeking an opportunity to get rid of loans, paper that they hold in order to release their funds, and if they do not throughout practically every year transfer a certain amount of the paper they carry to individuals—
>
> A. Yes, sir; that is true I think, from my observations that that sometimes prevents them from having larger rediscounts."

Also (R. 98, 99):

"Q. In your opinion, do the banks themselves come in competition with each other?

A. To some extent, yes, sir.

Q. Do you consider any competition in the banking business at all?

A. I do.

Q. In what does it consist?

A. Occasionally one bank **will try to win deposits** from another bank, **which would be competitive business.**

Q. Do you not consider the business of the bank to consist of just two things—getting deposits and investing these deposits—

A. That is true.

Q. Would you not say then that any person having money to deposit and investing it in the same class of security that the banks invest in necessarily comes in competition with it?

A. Not always, in my opinion; no, sir.

Q. Again going back to the other question that certainly each individual bank comes in competition with each individual other bank?

A. To some extent they are in competition, and in some cases I have known them to assist each other.

Q. It is true that a competitor sometimes assists his competitor?

A. Yes, sir.

Q. Taking your own estimate of the amount of these mortgage notes that you say are vendor's liens, that would leave still a total of over five hundred thousand dollars invested in secured notes by individuals—comparing these with the assets of

the various banks, do you not think that that sum of money invested and withdrawn from deposit, necessarily comes in competition with these banks?

A. No, sir; because I think a large portion of that is still not in competition, because I do not pretend to say that we have all of the land notes, or all of the other kind of investments. Or the good ones I know about, that is not a fair per cent.

Q. From your knowledge of the methods of giving property in for taxation, and from your knowledge of individual holders of paper, do you not think that the sum of five hundred thousand dollars as given in for taxation in 1921, unsecured notes, represent a very small portion of the unsecured notes actually held in the county by individuals?

A. No, sir; from my observation I would say it represented a large per cent.

Q. You know, of course, that the bank's form of investment of its funds is in mortgage notes, vendor's lien notes, unsecured notes and collateral notes, do you not?

A. Yes.

Q. Also a few county warrants, city warrants, and bonds, and other form of bonds?

A. Yes, sir.

Q. Taking the notes and mortgages, vendor's liens, etc., all of these, or practically all of them are local borrowers, are they not?

A. Most of them; yes, sir.

Q. Do you not personally know that it is the custom for individuals here to invest in local county warrants and city warrants?

A. I think there are; yes, sir.

Q. Suppose there is a certain commodity in which five persons are dealing, both in buying and selling, then suppose we will say that number is doubled, do you not think that **that is bound to create competition in the buying and selling of that commodity—additional competition.**

A. **It might unless the commodity itself was enlarged, which I think is true in 1921.**

Q. I am referring now, of course, in this particular instance to a commodity, that we are dealing in is notes, local bonds and some outside bonds, warrants, we have five banks dealing in buying and selling of these commodities, do you not think that the individuals who then come into the market with funds which amount to as much or more than any bank in the community, is bound to come in competition with each of these banks?

A. **Not if these banks are able to compete to the amount that their deposits will stand, I do not.**

Q. Do you not think that the fact that these individuals who are buying this same commodity and dealing in it, withdraw the money which they invest in this commodity, from the bank, this is an additional competition and an additional drag on the business of the bank?

A. I do not, from the fact that the men who would invest in that would invest in something if he did not receive that.

Q. Don't you know it to be a fact that before the tax rate was lowered to forty cents on such class of paper, it was the custom of individuals to leave very large amounts of money on deposit in the banks for a long time, and that that custom has been greatly decreased since the tax rate was lowered?

A. No, sir; from my observation of the bank in which I worked, the deposits that you refer to are now larger than they were at that time."

Also (R. 101):

"Q. I will ask you if, in your knowledge of the banks in this county, there has ever been any competition in the county with banks that caused the banks at any time to have to loan their money on local paper at any less than six per cent?

A. Not from my observation; no, sir.

Q. From your knowledge of bank conditions, I will ask your opinion in regard to this fact. It has been stated by some of the witnesses in this case that at a certain time of the year there arises in the banks surplus on account of cash coming in from the sale of tobacco, between January and April, now as a banker I will ask you to state whether or not it would be good banking or whether or not it is the policy of banks, to seek local securities or any of the character of loans that individuals invest in as shown by this record, for the purpose of investing that surplus, or is it the policy of the bank, and is it good banking for the banks to reserve that surplus in the hands of their correspondents to meet the banks' demands which always arise later in the year?

A. I think it only safe banking to reserve that from the fact that the deposits decrease later in the year to where a bank would not be safe if they loaned their full capacity at that period. These individuals' loans run for such a period as would not be safe for a bank to hold under those conditions.

Q. Then it is necessary for bankers to lay up that reserve in order to carry on their banking business throughout the remainder of the year?

A. It is."

It was apparently upon the testimony of this inexperienced witness that the Court of Appeals reached the final conclusion on the facts as follows:

> "It is not shown by anybody that any appreciable amount of money held by individuals is used in short time loans, such as the banks make, and this being true, the capital invested in land notes and the like does not come in competition with the national banks, for they do not handle this character of paper. The facts shown by the record warrant the conclusion that no material part of the capital held by the individuals is so invested as to come in competition with the national banks and on the record we so hold."

We submit that this finding and conclusion is contrary to the overwhelming weight of the evidence, and based upon a fallacious theory as to what constitutes competition within the meaning of the law.

The same Judge who wrote the above opinion in the case at bar also wrote the opinion for the same Court in Newport National Bank v. Board of Education, 114 Ky. 87, 90, wherein it upheld the right of a national bank to invest in 40-year school bonds of Newport, Kentucky, and said:

> "The powers of a national bank are derived from the Act of Congress * * *."

Page 91:

> "Every reason which sustains the power of a national bank to deal in the bonds of the United States or interest-bearing coupons of municipal bonds applies with equal force to its purchase of corporate bonds, for one is precisely an evidence of debt just as the other, and the purchase of one is no less a negotiation than the purchase of the other. The same reasons of public policy, too, apply in one case as the other. A large part of the capital of the country is invested in national banks, or controlled by them, and, if none of this capital could be applied to the purchase of municipal or corporate bonds, then the value of these securities would be greatly impaired, and much injustice will be done to the municipalities of the country."

If national banks may invest in 40-year municipal bonds, and if they could not do so, "then the value of these securities would be greatly impaired," it would seem to follow inevitably that for over 250 individual citizens to purchase over $1,000,000 of mortgages and purchase lien notes in the county, as compared with over $800,000 thereof purchased by the banks, shows competition for such investments.

Without a resumé we refer to the points and authorities (p. i) and respectfully submit that for manifest errors the judgment should be reversed.

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APPENDIX

Section 171 of Constitution of Kentucky:

> "The general assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.
>
> "The general assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation. * * *"

Section 172 of Constitution of Kentucky:

> "All property, not exempted from taxation by this constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any wilful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished, as may be provided by law."

Section 4019a-10 of Kentucky Statutes:

> "All property subject to taxation for state purposes as provided in section 4020, Kentucky Statutes, shall be subject also to taxation in the county, city, school or other taxing district in which same has a tax-

able situs, except the following classes of property which shall be subject to taxation for state purposes only:

"(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operations.

"(2) Machinery and products in course of manufacture of persons, firms or corporations, actually engaged in manufacturing and their raw material actually on hand at their plants for the purpose of manufacture. Provided, that persons, firms or corporations actually engaged in the printing, publication and distribution of a newspaper or newspapers, or operating a job printing plant, shall be deemed to be actually engaged in manufacturing within the meaning of this Act.

"(3) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured. Shares of stock not relieved from assessment under section 4088 of this act; provided, however, that nothing in this section shall forbid local taxation of franchises of corporations or of the shares of banks, trust companies, or combined banks and trust companies, doing business in Kentucky, or domestic life insurance companies.

"And provided, further, every state bank and trust company incorporated under the laws of this commonwealth, and every national bank doing business therein and located in any county, city, town or taxing district in this commonwealth shall make to the assessing officer of the county, city, town or taxing district a report showing the following facts, to wit: The name and postoffice address of the bank or trust company; the names of the president, cashier and board of directors thereof; the number of shares of stock, and the par and market value of each share; the amount of surplus fund and undivided profits; the amount of its deposits; the amount of cash on hand; the amount of bonds and

other securities held by it; the amount loaned on mortgages and the amount of its loans and discounts; the amount of value of all real estate situated in this commonwealth, held and owned by the bank or trust company on the first day of September of each year; and such other information as may be required. The assessing officer of the county, city, town or taxing district wherein any trust company, state and national bank is situated, shall assess the shares of such trust company, state and national bank for taxation for state, county, city, town and taxing district purposes. Each bank and trust company shall be entitled to have deducted from the total valuation placed on its shares by said board the assessed value of its real estate in this state.

"It shall be the duty of the trust company and banks to list with the county assessor of each county, and with the assessing officer in each city, town and taxing district its real estate and pay taxes thereon to the sheriff and to the collecting officer of each city, town and taxing district, and such officer shall make out and return the assessment to the proper authorities of the county, city, town or taxing district, at the same time and manner as prescribed by law for the return of the assessment of personal property therein.

"The equalization, collection, penalties and laws relating thereto, now provided by law for other personal property in the county, city, town or taxing district, shall apply in like manner to the collection of the taxes herein provided for. Any county, city, town or taxing district, not now having the right to collect such taxes by suit is hereby authorized and empowered so to do. Nothing herein shall be construed to repeal or amend chapter thirty-three of the acts of 1904, approved March 18, 1904, entitled 'An act to amend the revenue laws of the cities of the first class so as to carry

into effect the amendment of section 181 of the present constitution.' " (Section as amended March 20, 1922, c. 18, p. 67.)

Kentucky Statutes, Section 4092:

"An annual tax, at the same rate which may be fixed by law upon other personalty for state purposes, is hereby imposed upon each one hundred dollars ($100.00) of value of the shares of state banks and trust companies, incorporated under the laws of this commonwealth, and of national banks doing business therein, and such tax shall be paid to the treasurer of the state annually by such banks and trust companies for and on behalf of the owners of such shares of stock; and in addition thereto the said banks and trust companies shall pay to the local authorities in counties, cities, towns and districts taxes at the same rate imposed upon other personalty therein."

Section 4019a-16 of the Kentucky Statutes:

"(1) That an annual ad valorem tax of forty cents (40c) on each one hundred dollars ($100.00) of the fair cash value of all unmanufactured agricultural products subject to taxation, other than unmanufactured agricultural products actually on hand at the plants of manufacturing concerns, for the purpose of manufacture, shall be paid by the owner, person or corporation assessed, which tax shall be for state purposes only, and in lieu of all other ad valorem taxes by the state, or any county, city, town or other taxing district, on such unmanufactured agricultural products wherever grown except that cities and counties of the state may each impose an ad valorem tax of not exceeding fifteen (15c) on each one hundred dollars ($100.00) of the fair cash value of all such unmanufactured agricultural products subject to taxation within their limits. Unmanufactured agricultural products in the hands of a producer shall not be sub-

ject to this tax for the year in which same were grown.

"(2) All state taxes collected hereunder shall be paid into the state treasury to the credit of the general expenditure fund.

"(3) The assessment, the date thereof, the equalization and the collection of the tax herein imposed shall be governed by the laws applicable to other tangible personal property. * * *"

Chapter 117, Acts of 1924:

"(a) An annual tax of fifty cents (50 cents) on each one hundred dollars of their fair cash value is hereby imposed upon the shares of stock of State banks and trust companies, incorporated under the laws of this Commonwealth, and of national banks doing business therein, and such tax shall be paid to the sheriff of the county annually by such banks and trust companies for and on behalf of the owners of such shares of stock; such tax shall be for State purposes only, and in lieu of all other taxes upon said shares by the State, or any county, city, town, or other taxing district.

"(b) Except that the county in which the said bank or trust company is located may impose a tax of not exceeding twenty cents (20 cents) on the one hundred dollars of the fair cash value of such shares; and

"(c) Except that the city or town in which said bank or trust company is located may impose a tax of not exceeding twenty cents (20 cents) on the one hundred dollars of the fair cash value of such shares; and

"(d) Except that the tax of not exceeding forty cents (40 cents) on the one hundred dollars of the fair cash value of such shares may be imposed for school purposes by the regularly constituted authorities levying such tax or taxes in the district in which such bank or trust company is located; provided that when more than one levy is made for school purposes in the same year upon the same property, the said authorized levy,

but not exceeding forty cents (40 cents) in the aggregate, shall be distributed between said levies for school purposes in the proportion which the rate of each bears to the aggregate of all said rates.

U. S. REVISED STATUTES.

Section 5219.

Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct

the manner and place of taxing all the shares of national banking associations located within the State,

subject only to the two restrictions,

Act of March 4, 1923.

The legislature of each State may determine and direct, subject to the provisions of this section,

the manner and place of taxing all the shares of national banking associations located within its limits.

The several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided the following conditions are complied with:

1. (a) The imposition by said State of any one of the

that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such State,

above three forms of taxation shall be in lieu of the others.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on the net income of an association, the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing, and business corporations do-

ing business within its limits.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be a greater rate than is assessed upon the net income from other moneyed capital.

and that the shares of any national banking association owned by non-residents of any State

shall be taxed in the city or town where the bank is located and not elsewhere.

2. The shares or the net income as above provided of any national banking association owned by non-residents of any State, or the dividends on such shares owned by such non-residents, shall be taxed in the taxing district where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such non-resident shareholders.

Nothing herein shall be construed to exempt the real property of associations from either State, County, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of Section 5219 of the Revised Statutes of the United States as heretofore in

force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section.

THE ASSIGNMENTS OF ERROR (R. 115).

"Now comes The Georgetown National Bank, plaintiff-in-error, and respectfully submits that in the record, proceedings, decisions, and final judgment of the Court of Appeals of the State of Kentucky, in the above matter, there is manifest—in this towit:

"First. The court erred in holding that the provisions of Chapter 108 of the Kentucky Statutes, and especially Section 4019a-10 thereof, of the laws of the State of Kentucky, are not in conflict with and in violation of the provisions of and repugnant to United States Revised Statutes, Section 5219, for that the State of Kentucky, by and through the provisions of said chapter and said section, assumes and seeks, through the defendant-in-error, as Sheriff of Scott County, Kentucky, and the Collector of Revenue, for the purposes of said county: (a) To deprive the plaintiff-in-error, as a national banking association, of the immunities and protection provided by said Act of Congress, Revised Statutes, Section 5219, in that all taxable intangible personal property, including all moneyed capital in the hands of the individual citizens of such State excepting only the shares of stock in national banks, State banks and trust companies, in the State of Kentucky and in Scott

County, Kentucky, is made taxable at the rate of 40c per one hundred dollars of valuation and taxable 'for State purposes only,' whereas shares of stock of plaintiff-in-error and all other national banking associations, State banks and trust companies doing business in the State of Kentucky, are 'in addition thereto' made liable to county, city and school taxing rates levied in the several jursidictions and in Scott County, Kentucky, aggregating a total of $2.70 per one hundred dollars of valuation.

"(b) To deprive and to deny to the plaintiff-in-eror, and all other national banking associations, State banks and trust companies doing business within the jurisdiction of the Commonwealth of Kentucky, the equal protection of the law and especially of the Fourteenth Amendment to the Constitution of the United States.

"Second. The court erred in holding that by the provisions of Section 4019a-10 of the laws of Kentucky, the plaintiff-in-error is not deprived of its rights, privileges and immunities secured to it and other national banking associations organized under the Act of Congress, and especially of Revised Statutes, Section 5219 thereof.

"Third. The court erred in holding that the Act of Congress approved March 4, 1923, as an amendment and re-enactment of Revised Statutes, Section 5219, was retroactive, and that said amendment 'was intended to give the power to collect taxes levied under the old Act if such levy was valid under the amendment'; and 'under that Act' (the amendment of March 4, 1923) 'the Kentucky Statutes is valid,' and the taxes levied for said county purposes for each of the years 1919, 1920, 1921 and 1922, are collectible.

"Fourth. The Court erred in its interpretation and construction of Revised Statutes, Section 5219, to the prejudice and damage and injury of plaintiff-in-error.

"Fifth. The court erred in its interpretation and construction of the Act of Congress of March 4, 1923, amending and re-enacting Revised Statutes, Section 5219, to the prejudice and damage and injury of plaintiff-in-error.

"Sixth. The court erred in holding:

"(a) That it was necessary for the plaintiff-in-error to establish its case by conclusive and undisputed evidence and in holding against the plaintiff's contention, because 'in this case it is not shown by evidence without dispute that the moneyed capital in the hands of individuals invested in bonds, notes or other evidences of indebtedness comes into competition with the national banks.'

"(b) That 'it is shown by all the testimony that the banks make short-time loans and that they decline to make long-time loans.'

"(c) That because banks generally, and plaintiff-in-error, avail themselves of their national charter powers to borrow money or rediscount notes, competition of individual citizens in like securities is immaterial, upon the assumption that it is not a function of banks in making money to avail themselves of their right to borrow money or rediscount during part of the year for the purpose of making short-time loans.

"(d) That because 'the moneyed capital of individuals is invested in notes given for the purchase money of land or secured by a mortgage on land and running for a longer time than banks are willing to lend money for,' there is no competition with banks, notwithstanding the evidence established that banks did and do so invest in large amounts and are in direct competition with individual lenders to secure such loans and that national banks are expressly authorized to so invest by an Act of Congress known as Federal Reserve Act, Section 24.

"(e) That 'it is not shown by anybody that any appreciable amount of money held by individuals is used in short-time loans, such as the banks make, and this being true the investment in land, notes and the like does not come in competition with the national banks, for they do not handle that character of paper'; whereas the fact is that such competition, in a material amount, was established by the evidence, and that all intangible personal property in Kentucky owned by individuals throughout the State is given the preferential and discriminatory 40c rate, and bank shares alone are subjected to higher rates aggregating $2.70 per hundred dollars of valuation, or higher.

"(f) That 'the facts shown by the record warrant the conclusion that no material part of the capital held by individuals is so invested as to come in competition with national banks, and on the record we so hold'; whereas the evidence established exactly the contrary and established that throughout the State of Kentucky, individual investors in all taxable intangible personal property have invested over $309,000,000, while the total investment in all the capital stock in all the banks in Kentucky is approximately $64,000,000; that the individual citizens of Scott County, Kentucky, had made investments in competition with the banks of Scott County to an amount of approximately $1,000,000, while the investments in the capital stock of all the banks of Scott County amount to only $480,000, and the investments in the capital stock of the national banks of that county amounted to only $220,000.00, and the Circuit Court through the Chancellor so held."

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Supreme Court of the United States

OCTOBER TERM, 1925

No. 377

GEORGETOWN NATIONAL BANK, Plaintiff-in-Error.

vs.

OLLIE M. McFARLAND, Sheriff of Scott County, Kentucky;
THE FISCAL COURT OF SCOTT COUNTY, KENTUCKY, ETC., ET AL, Defendants-in-Error.

BRIEF FOR DEFENDANTS-IN-ERROR

Statement

LAWS OF KENTUCKY RELATIVE TO TAXATION OF BANK SHARES AND OTHER PERSONAL PROPERTY.

In 1915 Section 171 of the Constitution of Kentucky was amended by adding the following provision:

> "The General Assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation."

In 1917 the Legislature of Kentucky made a general revision of the tax laws of the state.

So much of the 1917 Acts as are material to the consideration of this case are as follows:

General State Tax Ky. Stat. Sec. No. 4019.

"An annual tax of forty (40) cents upon each one hundred dollars ($100) of value of all property directed to be assessed for taxation, as herein provided, shall be paid by the owner, person or corporation assessed."

Bank Deposits exempted from local tax and subjected to only nominal state tax Ky. Stat. Sec. No. 4019a-1:

"Every person, firm or croporation of this State having, on the first day of September, a deposit in any bank, trust company or combined bank and trust company, organized under the laws of this State, or in any national bank in this State, shall pay a tax to the State which is hereby assessed at the rate of one-tenth of one 1 per cent, annually, upon the amount of such deposit so held by such bank on the first day of September, and no deduction therefrom shall be made on account of any indebtedness."

Ky. Stat. Sec. No. 4019a-2:

"No other tax shall be assessed on such deposits in bank or against the depositor of said deposits by the State or any county, city, town or other district."

Property subject to local taxation. Ky. Stat. Sec. 4019a-10:

"All property subject to taxation for State purposes as provided in Section 4020, Kentucky Statutes, shall be subject also to taxation in the county,

city, school or other taxing district in which same has taxable situs, except the following classes of property which shall be subject to taxation for State purposes only:

(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operations.

(2) Machinery and products in course of manufacture of persons, firms or corporations actually engaged in manufacturing and their raw material actually on hand at their plants for the purpose of manufacture.

(3) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured. Shares of stock not relieved from assessment under Section 4088 of this act; provided, however, that nothing in this section shall forbid local taxation of franchises of corporations or of the shares of banks, trust companies or combined banks and trust companies doing business in Kentucky, or domestic life insurance companies. And provided, further, every State bank and trust company incorporated under the laws of this Commonwealth and every national bank doing business therein and located in any county, city, town or taxing district in this Commonwealth shall make to the assessing officer of the county, city, town or taxing district a report showing the following facts, to-wit: The name and postoffice address of the bank or trust company; the names of the president, cashier and

board of directors thereof ;the number of shares of stock and the par and market value of each share; the amount of surplus fund and undivided profits; the amount of its deposits; the amount of cash on hand; the amount of bonds and other securities held by it; the amount loaned on mortgages and the amount of its loans and discounts; the amount of value of all real estate situated in this Commonwealth, held and owned by the bank or trust company on the first day of September of each year, and such other information as may be required. The assessing officer of the county, city, town or taxing district wherein any trust company, State and National bank is situated shall assess the shares of such trust company, State and National bank for taxation for State, county, city, town and taxing district purposes. Each bank and trust company shall be entitled to have deducted from the total valuation placed on its shares by said board the assessed value of its real estate in this State. It shall be the duty of the trust company and banks to list with the county assessor of each county and with the assessing officer in each city, town and taxing district its real estate and pay the taxes thereon to the sheriff and to the collecting officer of each city, town and taxing district, and such officer shall make out and return the assessment to the proper authorities of the county, city, town or taxing district at the same time and manner as prescribed by law for the return of the assessment of personal property therein."

Local tax rate. The rates of taxation assessed for

local purposes by the County of Scott for the years in controversy are as follows:

1919—70c per $100.00 of assessed valuation.

1920—70c per $100.00 of assessed valuation.

1921—65c per $100.00 of assessed valuation.

1922—65c per $100.00 of assessed valuation.

The shares of the plaintiff were also subject to taxation in the city of Georgetown for local purposes at the same rate assessed upon other city property.

PARTIES TO THIS CASE AND ISSUES INVOLVED.

The Plaintiff-in-Error, a National Bank, located in the city of Georgetown, Scott County, Kentucky, instituted this action on behalf of its share-holders seeking an injunction against the Defendants-in-Error, the officers of Scott County charged with the duty of assessing and collecting local taxes, to restrain them from collecting the taxes assessed upon its bank shares for county purposes for the years, 1919, 1920, 1921 and 1922, on the ground that the laws of Kentucky subjecting bank shares to local taxation are, in their application to National bank shares, illegal and void by reason of the limitation placed upon the authority of the state to tax the shares of stock of National banks by the provision of Section No. 5219 U. S. Revised Statutes, which is as follows:

> "Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority

of the State within which the association is located, but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individuals citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere.

"Nothing herein shall be construed to exempt the real property of associations from either State, County or Municipal taxes, to the same extent, according to its value, as other real property is taxed."

The substance of the allegations made in the Plaintiff's petition are, that in each of the years 1919, 1920, 1921 and 1922 there was in the hands of individual citizens, residing in Scott County and in the State of Kentucky, a large amount of moneyed capital consisting of money in hand, notes, bonds, accounts and other credits, all of which was exempted, by the state law, from local taxation and that said property in the hands of individual citizens was of such a character and was so employed that it was in actual and direct competition with the business of the said National Bank and by reason thereof its exemption from local taxation constitutes a hostile and unlawful discrimination against National bank shares, contrary to the provisions of the Federal Statute, above referred to.

By their answer to the petition, the Defendants denied each of the allegations of the petition with reference to said property.

Proof was taken upon the issues of fact made by the pleadings.

In accordance with the law of Kentucky in Equity Cases, the Kentucky Court of Appeals considered the evidence introduced by the parties and adjudged that the plaintiff failed to show the existence of any material amount of moneyed capital in the hands of individual citizens of the State which is so employed that it is in competition with the business of National banks and therefore denied the injunction sought by the plaintiff. (Record, 109 to 114.) Officcially reported. O. McFarland, Sheriff vs. Georgetown National Bank,, 208 Ky. 7.)

By a Writ of error to the Kentucky Court of Appeals, the plaintiff now seeks a review and reversal of the judgment of the State Court.

NO PRIVATE BANKING IN KENTUCKY.

Before entering upon the discussion of the questions involved in this case, it is necessary to have in mind the fact that in Kentucky all banking business, properly so called, is in the hands of National banks and State Incorporated banks, private banking in the State being prohibited by a law enacted in 1906, which is as follows:

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1. That it shall be unlawful for any person or per-

sons, either as individuals or co-partners, to engage in or conduct the business of private banking in this Commonwealth.

2. Any person or persons who shall engage in such business after this law shall become effective shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty nor more than fifty dollars for each day he or she shall be engaged in said business; after April 15, 1906, to be recovered under indictment in the circuit court of the county where the offense shall be committed.

3. Sections five hundred and ninety-nine, six hundred, six hundred and one and six hundred and two, Kentucky Statutes, relating to private banking are hereby repealed, and persons hereafter conducting or engaging in the banking business in this Commonwealth are required to become incorporated as now provided by law.

4. Under the opinion the court of appeals it being necessary that all banking business shall be conducted by incorporated banks, in order to render taxation of banks equal in this Commonwealth, an emergency is declared to exist, and this law shall be in force from its approval by the Governor."

(Acts of General Assembly of Ky. 1906, Chapter 44, Page 278)

Argument

(1.) "OTHER MONEYED CAPITAL" WITHIN THE MEANING OF THE CONGRESSIONAL RESTRICTION UPON THE AUTHORITY OF THE STATES TO TAX THE SHARES OF NATIONAL BANKS PROVIDED BY SECTION 5219, U. S. REVISED STATUTES.

It is clear that National banks are agencies of the United States and their shares cannot be taxed by the States, except by the consent of Congress, and then only in conformity with the restrictions and limitations attached to that consent.

By Section 5219 U. S. Revised Statutes, Congress assented to the taxation of the shares of National banks by the States, subject to the restriction that: "the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

That which is deemed "other moneyed capital" within the meaning and purpose of this restriction has so often been stated by this Court that it seems it should be no longer open to controversy.

In the case of Mercantile Bank vs. New York, 121 U. S. 151, after carefully reviewing the earlier decisions upon the subject and pointing out the policy and purpose of the restriction as the key to its proper interpretation, the Court said:

> "But 'moneyed capital' does not mean all capital the value of which is measured in terms of

money. In this sense, all kinds of real and personal property would be embraced by it, for they all have an estimated value as the subjects of sale. Neither does it necessarily include all forms of investment in which the interest of the owner is expressed in money. Shares of stock in railroad companies, mining companies, manufacturing companies, and other corporations are represented by certificates showing that the owner is entitled to an interest, expressed in money value, in the entire capital and property of the corporation; but the property of the corporation which constitutes its invested capital may consist mainly of real and personal property, which, in the hands of individuals, no one would think of calling 'moneyed capital', and its business may not consist in any kind of dealing in money, or commercial representatives of money. So far as the policy of the government in reference to national banks is concerned, it is indifferent how the states may choose to tax such corporations as those just mentioned, or the interest of individuals in them, or whether they should be taxed at all. Whether property interest in railroads, in manufacturing enterprises, in mining investments and others of that description are taxed or exempted from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that congress intended, in respect to these matters, to interfere with the power and policy of the states. The business of

banking as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans; and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'Moneyed capital'. Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of congress.

"That the words of the law must be so limited appears from another consideration. They do not embrace any moneyed capital, in the sense just defined, except that in the hands of individual citizens. This excludes moneyed capital in the hands of corporations, although the business of some corporations may be such as to make the shares therein belnging to individuals moneyed capital in their hands, as in the case of banks. A railroad company, a mining company, an insurance company, or any other corporation of that descrtpiion, may have a large part of its capital in securities payable in

money, and so may be the owners of moneyed capital; but, as we have seen, the shares of stock in such companies held by individuals are not moneyed capital.

"The terms of the act of congress, therefore, include shares of stock of other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

It was contended for a time that the later case of Merchants National bank vs. Richmond, 256 U. S. 635 gave a wider meaning to the term "moneyed capital" than was attached to it in the earlier cases but in the recent case of: First National Bank of Guthrie vs. Anderson County Auditor, et al, decided by this Court on January 4, 1926, 46 S. Ct. Rep. 135 (not yet officially reported), in referring to the Richmond case, the Court said:

"But nothing was said in the opinion indicating that an enlargement was intended. On the contrary it distinctly accepted the meaning adopted in prior decisions."

and the Court further said:

"In Mercantile National Bank vs. New York, supra, where the terms and purpose of the restriction were much considered, it was distinctly held that the words 'other moneyed capital' must be taken as impliedly limited to capital employed in substantial competition with the business of national banks. In later cases that definition was accepted and given effect as if written into the restriction. **It, of course, would exclude bonds, notes or other evidences of indebtedness when held merely as personal investments by individual citizens not engaged in the banking or investment business, for capital represented by this class of investments is not employed in substantial competition with the business of national banks.**"

In the same case, this Court very carefully summarized the holdings of all previous cases relative to the purpose and meaning of the Federal restriction, as follows:

"1. The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of bank-

ing. Mercantile National Bank vs. New York, 121 U. S. 138, 155, 7 S. Ct. 826, 30 L. Ed. 895; Des Moines National Bank vs. Fairweather, supra, 116.

"2. The term 'other moneyed capital', in the restriction, is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. Mercantile National Bank vs. New York, supra, 157; Aberdeen Bank vs. Chehalia County, 166 U. S. 440, 461, 17 S. Ct. 629, 41 L. Ed. 1069.

"3. Moneyed capital is brought into such competition where it is invested in shares of state banks or in private banking, and also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment. Mercantile National Bank vs. New York, supra, 155, 157; Palmer vs. McMahon, 133 U. S. 660, 667, 668, 10 S. Ct. 324, 33 L. Ed. 772; Talbot vs. Silver Bow County, 139 U. S. 438, 447, 11 S. Ct. 594, 35 L. Ed. 210.

"4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrim-

> ination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction. People vs. Weaver, 100 U. S. 539, 25 L Ed. 705; Boyer vs. Boyer, 113 U. S. 689, 701, 5 S. Ct. 706, 28 L. Ed. 1089; National Bank of Wellington vs. Chapman, 173 U. S. 205, 216, 19 S. Ct. 407, 43 L. Ed. 669."

The Court thus points out two specific kinds of moneyed capital which clearly fall within the meaning of the Statute, namely, investments in shares of state banks and investments employed in private banking. Since private banking is prohibited by the law of Kentucky, heretofore set out, and shares in state banks are subjected to the same tax as those of national banks, no discrimination against national bank shares in favor of either of these classes of moneyed capital is claimed to exist under the tax laws of Kentucky. Therefore, in the consideration of this case, we are confined to the third and only other class of moneyed capital which the Court includes within the meaning of that term as used in the Statute, namely, that very limited class of moneyed capital which is not actually employed in either state banking or private banking, but which, nevertheless, by reason of the manner of its employment, is brought into substantial competition with the business of national banks. The Court clearly distinguishes this class of investments from those which are known as "personal investments" consisting of bonds, notes, or other evidences of indebtedness

which are held merely as personal investments by individual citizens not engaged in the banking or investment business and expressly excludes such personal investments from the meaning of the term "moneyed capital" as used in the Statute.

Isolated transactions by individual citizens by way of loans or investments in notes, stocks, or bonds, may in some remote degree be regarded as in competition with banking, but the Court has made it plain that such competition as may arise from the use of private capital in this manner does not constitute that "substantial competition" with the business of banking necessary to bring it within the meaning and purpose of the statutory restriction.

The Federal Government is not concerned as to how the State may choose to tax such property of its individual citizens or whether it should be taxed at all.

We are therefore forced to the conclusion that outside of money employed in state and private banking the only property included within the meaning of the term, other moneyed capital, as used in the Statute, is that money or property which, in the hands of individuals, is devoted, with such reasonable continuity and regularity, to a branch of business similar in character to that carried on by national banks, as to bring about, by reason of its primary and characteristic purpose, an actual business rivalry amounting to a hostile and unfriendly competition with the business of such banks. Only when so employed do the Courts regard the employment as "substantial competition."

There can be no uncertainty as to the business of national banks which may become the subject of such competition. The branches of business in which national banks may engage are comparatively limited and are clearly defined by Congress.

By Section 5136 U. S. Revised Statute, as amended in 1912, national banks are authorized as follows:

> "to exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title".

By Section 24 of the Federal Reserve Act as amended by the Act of September 7, 1916, C. 461, U. S. Comp. St. No. 9763, the following power is granted to national banks:

> "any national banking association not situated in a central reserve city may make loans secured by improved and unincumbered farm land situated within its Federal Reserve District or within a radius of one hundred miles of the place in which such bank is located, irrespective of district lines, and may also make loans secured by improved and unincumbered real estate located within one hundred miles of the place in which such bank is located,

irrespective of district lines, subject to certain restrictions upon the amount and time of such loan."

Bearing in mind the comparatively limited scope of the business of national banks and the very narrow and restricted meaning attached to the term "other moneyed capital" as used in the Statute, there should be no difficulty in determining whether the facts of a particular case disclose the existence of substantial competition and clear discrimination against national banks in violation of the letter or spirit of the Federal Act.

(2.) THE NECESSITY OF PROOF SHOWING THE EXISTENCE OF A RELATIVELY MATERIAL AMOUNT OF "OTHER MONEYED CAPITAL" EMPLOYED IN SUBSTANTIAL COMPETITION WITH NATIONAL BANKS.

Since there are so many classes of moneyed capital, generally speaking, which do not in any way come into substantial competition with national banks and consequently are not included within the technical meaning of the term as used in the Statute, this Court, in numerous cases, has announced the rule that in the absence of facts showing clearly a discrimination by reason of the existence of a relatively material amount of "moneyed capital" within the meaning of the term, as used, and favored by a lower tax rate, the Court may well assume that all moneyed capital so favored belongs to a class of investments which does not compete with the business of national banks. It necessarily follows that the burden of proving these essential facts rests upon the party seeking to take advantage of the Federal restriction.

The burden thus cast upon the party assailing the state tax law is not met by merely showing the existence within the state of undescribed and unidentified intangible personal property in the hands of individuals bearing a lower tax rate than national banks, howsoever vast the extent of it may be. It is clear that the Government is not concerned with the tax rate imposed by the States upon intangible property in general or whether it levies any tax at all thereon so long as it does not appear that a relatively material part of the favored property comes in substantial competition with the business of national banks.

We have been unable to find any case where the Court assumed a state of facts showing discrimination against national banks in the absence of either proof or admission upon the record disclosing actual conditions.

Where, upon the record, there has been a failure to support the facts of clear discrimination by pleading and proof, the Court has denied the claims of the national banks of the character made in this action, on the ground of such failure.

In the case of First National Bank of Garnett vs. Ayers, Sheriff, 160 U. S. 640, the Court said:

> "The plaintiff in error claimed that an illegal discrimination was made against the holders of national bank stock, because the statute of the state of Kansas permits certain kinds of debts owing in good faith by any person, company, or corporation to be deducted from the gross amount of credits belonging to such person, company, or corporation, in listing

their property for taxation, while owners of shares of stock in national banks are not allowed to deduct their indebtedness from the value of their shares of stock, and for that reason the plaintiff says that the Kansas statute is in conflict with the above cited section (5219) of the statutes of the United States."

* * *

"In Mercantile Bank vs. City of New York, 121 U. S. 138, 7 Sup. Ct. 826, it was held that the main purpose of congress in fixing limits to taxation on investments in shares of national banks was to render it impossible for a state, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring state institutions or individuals carrying on a similar business and operations and investments of a like character. Mr. Justice Matthews, in delivering the opinion of the court in the above cited case, gave an exhaustive review of the cases which had been decided in this court up to that time, under this section of the United States statute, and it is evident from the opinion and decision of the court in that case that the intent of the United States statute was to prevent an unjust discrimination against the moneyed capital invested in shares of national banks, by rendering it "impossible for the state, in levying a tax on such shares, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character." * * *

"From the record in this case it is wholly impossible to determine that there is any discrimination against the holders of national bank stock. In order to come to a decision in favor of the plaintiff in error it would be necessary for this court to take what counsel for plaintiff calls "judicial notice" of what is claimed to be a fact, viz. that the amount of moneyed capital in the state of Kansas from which debts may be deducted as compared with the moneyed capital invested in shares of national banks, was so large and substantial as to amount to an illegal discrimination against national bank shareholders. This we cannot do. There is no proof whatever upon the subject." * * *

"As the record appears, there is no fact of which the court can take judicial notice. The relative proportion in which the moneyed capital of the state of Kansas is invested in the various kinds of securities to be therein found, this court cannot judicially know. **When proof shall be made regarding that matter, it may then be determined intelligently whether, within the Case of Mercantile Bank, supra, there has been a real discrimination against the holders of national bank shares, and hence a violation of the above-cited act of congress."**

In the case of the First National Bank vs. County of Chehalis, 166 U. S. 440, the facts were admitted by demurrer to the bill. The Court sets out in the opinion the substance of the allegations contained in the bill, as follows:

"The substance of those allegations is: First, that there was taxable moneyed capital in Chehalis county which escaped taxation, amounting to $237,-400; second, that there was also unassessed moneyed capital in other portions of the state exceeding $14,-000,000; third, that the moneyed capital invested in the banks, national and state, was $11,000,000; fourth, that there was invested in the stocks and bonds of insurance, wharf and gas companies and other moneyed institutions, moneyed capital amounting to at least $26,000,000.00."

In pointing out the insufficiency of the facts alleged to indicate discrimination against the business of national banks, the Court said:

"As to the sum of $237,400, alleged to be invested by individual citizens of Chehalis county in loans and securities to them payable and owing by other citizens of that county, we are not informed by the bill of the nature of such loans and securities, and, as against the pleader, we may well assume that they belong to a class of investments which does not compete with the business of national banks. The same is true of the sum of $14,000,000 alleged to be invested in loans and securities by citizens of the state of Washington, and to them payable and owing by other citizens of said state. It is, indeed, alleged in the bill that these investments were 'taxable capital", but that is an averment in the nature of a legal conclusion. If those loans and securities had been identified in the bill, or their character de-

scribed, the court might have reached a different conclusion as to their taxable character."

In attempting to avoid the application of the conclusions of this Court in the above cases to this case, the plaintiff-in-error in its brief contends that it is only where the state law favors "some forms of property" that the Court will demand proof as to the amount and nature of competition. A sufficient answer to this argument is to call attention to the case of: National Bank of Commerce vs. The City of Seattle, 166 U. S. 463, in which the Court said that the additional allegations that the favored moneyed capital referred to was all the moneyed capital in the hands of individuals outside of that invested in incorporated banks did not call for a different conclusion than the one reached in the Chehalis case. The Court said:

"The bills of complaint in these cases are substantially of the same legal import, as far as any federal question is concerned with that considered in the case of First National Bank of Aberdeen vs. County of Chehalis, 17 Sup. Ct. 629, in which the opinion of this court has just been delivered. The only difference that we notice is that, in connection with the allegation that there existed large amounts of taxable moneyed capital owned by resident citizens and invested in interest-bearing loans and securities, there is made the additional allegation that all of said other moneyed capital referred to was all of the moneyed capital in the city owned by resident individual citizens, and invested in interest-bearing

loans, discounts, and securities, except that invested in incorporated banks located in the city.

"It is not perceived that this additional allegation calls for any different conclusion than the one reached in the previous case. We are still uninformed whether the moneyed capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with that of national banks. The averment that the moneyed capital exempted was 'taxable' does not enable us to say that it therefore consisted of investments within the meaning of the term 'moneyed capital' as used in the act of congress."

In the case of the First National Bank of Wellington vs. Chapman, 173 U. S. 205, as a result of the failure of proof of facts showing what proportion of property alleged to be favored by the state law constitutes moneyed capital within the meaning of the Federal Act, the Court said:

"As a result, we find in this record no means of ascertaining whether there is any unfavorable discrimination against the shareholders of national banks in the taxation of their shares, and in favor of other moneyed capital in the hands of individual citizens. There is nothing upon the face of these statutes which shows such discrimination, and therefore it would seem that the plaintiff in error has failed to make out a case for the intervention of the court."

In view of the laws of Kentucky protecting national banks as well as state banks from competition by private banking and in view of the effort of the State in the revision of its tax laws to advance the interests of its banks by reducing taxation of bank deposits to only a nominal rate (1-10 of 1 per cent) and in view of the fact that state banks are in all respects placed upon an equal footing with national banks, it would hardly be contended by the most critical observer that the enactment of the Kentucky tax laws was prompted by any hostile or unfriendly attitude toward national banks. On the other hand, when considered as a whole, the laws of Kentucky bear on their face ample evidence that they have been enacted with a specific view to promoting and fostering the prosperity of banking business within the State, with reference to both national and state banking institutions. The tax legislation favoring bank deposits can be interpreted in no other way.

In contending that the Kentucky law is invalid on its face, without proof of any discrimination in fact, the plaintiff-in-error would have the Court assume as a matter of law the following conditions to exist:

(a.) That there exists in Kentucky in the hands of individual citizens who are not engaged in banking or investment business, moneyed capital employed by them with such continuity and regularity in investments which are not properly termed "personal investments" but in the employment of which the primary and characteristic purpose is the operation of a regular continuous business enterprise substan-

tially the same as the loan and investment features of banking.

(b.) That the amount of such moneyed capital so characteristically employed is relatively material.

Such facts this Court has expressly declined to assume in the cases above referred to and the plaintiff has not pointed to any case in which the Court made such broad assumptions purely as a matter of law.

The opinion of this Court in the case of Merchants National Bank vs. City of Richmond, 256 U. S. 635, shows that the law of Virginia, then under consideration by this Court, did not merely favor "some" intangible property but upon its face levied lower tax rate than upon bank shares on "intangible personal property in general, including, bonds, notes, and other evidences of indebtedness". With this law before it, the Court said:

> "Thus in Bank of Commerce vs. Seattle, 166 U. S. 463, 464, 17 Sup. Ct. 996, 41 L, Ed. 1079, the precise ground of decision was the want of a showing that the moneyed capital left unassessed was, as to any material proportion thereof, moneyed capital coming into competition with that of national banks. To the same effect First National Bank of Wellington vs. Chapman, 173 U. S. 205, 219, 19 Sup. Ct. 407, 43 L. Ed. 669. In the present case, there is a clear showing of such competition, relatively material in amount, and it follows that, upon the undisputed facts, the ordinance and statute under which the stock of plaintiff in error was assessed, as construed and applied, exceeded the limitation prescribed by

section 5219, Rev. Stat., and hence that the tax is invalid."

If, without proof of the fact of substantial competition, the Court were at liberty to declare the Virginia Statute invalid on its face by reason of the sole fact that the law on its face favored "all" stocks, bonds and other intangible property in the hands of individual citizens, the Court certainly would have based its opinion upon the face of the law rather than upon the facts of competition established in the record The fact that the Court points out the difference between the showing of facts in the Virginia Case and the facts shown in the cases of Bank of Commerce vs. Seattle, and the First National Bank of Wellington vs. Chapman, as the sole basis for holding the Virginia law invalid, warrants the conclusion that but for such clear showing of facts upon the record the Court would have followed the rule laid down in the prior cases referred to and would have refused to declare the Virginia law invalid for want of proof of facts showing discrimination.

A still more recent illustration of the rule that the Court will require a showing of clear discrimination, as a matter of fact, before declaring a state law invalid, is found in the latest case upon the subject, First National Bank vs. Anderson, supra, decided January 4, 1926. In that case, the Court had under consideration a Statute of the State of Iowa under which the tax rate, for all purposes, upon bank shares was 143.5 mills on the dollar while the rate imposed upon "notes, mortgages, and

other evidences of debt and investments of individuals in securities" was only 5 mills on the dollar.

The case was disposed of on a demurrer to the petition which set out the law of the State and contained broad allegations of fact showing actual discrimination. By the demurrer, of course, the defendant in error admitted the facts alleged but insisted that the facts disclosed by the petition were not sufficient to show discrimination.

The Iowa Statute is equally as broad on its face as the Kentucky law in its application of a lower rate of taxation to all intangible property in the hands of individuals other than bank shares and if the contention made by the plaintiff-in-error in this case, that a state law may be declared void on its face as a matter of law without proof of actual facts of discrimination, be correct, it would have been entirely unnecessary for the Court to have expended any time or effort in construing the allegations of fact contained in the petition in this Iowa Case. The lack of facts shown by the petition would have been wholly immaterial in the face of the law set out. Notwithstanding the admitted provisions of the state law, this Court found it necessary to carefully analyze the various allegations of fact with reference to the showing of actual discrimination against national banks. The opinion of the Court with reference to the sufficiency of the petition challenged by the demurrer is not based upon the face of the law set out but entirely based upon the sufficiency of the facts alleged. The Court said:

"With this understanding of the congressional restriction, we come to consider whether the allegations of fact in the petition, admitted by the demurrer, show that the tax on the bank's shares, which the state court regards as authorized by the state law, was imposed contrary to that restriction. The allegations before quoted are all that are material. They declare at the outset and again later on that the shares were subjected to a greater rate of taxation than was imposed on other moneyed capital in the hands of individuals used and utilized in competition with the bank. This declaration is so connected with the intervening allegations that it both colors and explains them. Some of these are directly to the effect that the tax on the shares was computed at the rate of 143.5 mills on the dollar while that on notes, mortgages, and other evidences of indebtedness, 'such as normally enter into the business of banking' and representing moneyed capital of individual citizens 'engaged in competition' with the bank, was computed at 5 mills on the dollar. Then follows an allegation that the amount of notes, mortgages, and other evidences of indebtedness, representing moneyed capital of individual citizens of the county and taxed at 5 mills on the dollar, was approximately $5,000,000, while the total bank stock, state and national in the county was not more than $316,852.

"The defendants point out that the allegation last mentioned does not in itself say that the $5,000,-

> 000 of other moneyed capital, or any substantial portion of it, was employed in competition with the bank, and from this they argue that the petition falls short of showing a discrimination in favor of a relatively substantial amount of moneyed capital so employed. But that allegation is so related to the others that, to be rightly understood, it must be read with them. We think such a reading shows that it is intended to refer to the notes, mortgages, and other evidences of indebtedness which the others describe as representing moneyed capital of individual citizens engaged in competition with the bank, and that it means that this competing capital, on which the 5-mills tax was imposed, approximately $5,000,000, while the bank stock, which was subjected to the tax of 143.5 mills, did not exceed $316,-852. Thus understood, the allegation is in accord with the theory of which the others obviously proceed, and serves with them, to show a serious discrimination against the bank's shares and in favor of a relatively substantial amount of competing moneyed capital."

From the foregoing, it must be apparent that but for a sufficient showing of fact, the Court would not have declared the Iowa Statute invalid. We may now apply the same rule to this case and investigate the facts disclosed by this record.

(3.) THE PROOF IN THIS CASE DOES NOT SHOW THE EXISTENCE OF ANY "MONEYED CAPITAL" IN THE HANDS OF INDIVIDUAL CITIZENS IN KENTUCKY WHICH IS EMPLOYED IN SUBSTANTIAL COMPETITION WITH THE BUSINESS OF NATIONAL BANKS WITHIN THE MEANING OF SECTION 5219, U. S. REVISED STATUTES.

The contention of the plaintiff-in-error that the general rule, under which the findings of fact by the State Court are conclusive, is not applicable to this case, makes it necessary that we consider the facts disclosed by this record upon which the judgment of the Kentucky Court of Appeals was based. The plaintiff-in-error appears to construe the decision of the Kentucky Court to require that discrimination be shown "by evidence without dispute." An examination of the opinion (R. 109-115) shows that no such holding can be attributed to the Kentucky Court. In referring to the fact that in this case discrimination "is not shown by evidence without dispute" (R. 112) the Court merely distinguishes this case from the case of Merchants National Bank vs. City of Richmond, to which reference had been previously made in the opinion and in which the record showed that evidence of discrimination was shown without dispute.

The findings of fact made by the Kentucky Court are based upon a careful consideration of the evidence in the case, as a result of which the Court said: (R. 112-113)

> "The facts shown by the record warrant the conclusion that no material part of the capital held by

individuals is so invested as to come in competition with national banks and on the record we so hold."

The proof contained in the record of this case consists of the testimony of Ben Marshall, Secretary of the State Tax Commission, L. L. Calvert, Clerk of Scott County Court, and the Cashiers of two national banks and three state banks located in Scott County. That portion of the testimony of each of these witnesses relating to the existence of moneyed capital in the hands of individuals may be summarized as follows:

Ben Marshall (R. 39 to 56)

Mr. Marshall, the Secretary of the State Tax Commission, files copies of the various assessment records showing the intangble personal property assessed to individuals in Scott County. His evidence does not pretend to describe or indicate the nature of the various classes of intangible personal property shown by the assessment records nor does his testimony in any way attempt to disclose the manner in which the individual owners employ their moneyed capital.

G. T. Hambrick (R. 56 to 75)

Mr. Hambrick, the Cashier of the plaintiff-in-error, labors under the impression that all individuals who loan money come into competition with banks. His idea of the meaning of competition is shown by the following extract from his testimony:

> "Individuals loaning money operate in two or three ways against the interest of banks. Not only taking investments from the banks, but withdraw funds on deposit, thereby lessening the earning

power of the bank. When an individual loans his money, the borrower feels no obligation to do business with any particular bank, whereas when a bank makes a loan it forms a tie between the individual and the loaning bank, thereby increasing the bank's business. I have known cases where individuals have made loans at a smaller rate of interest than was being charged by the banks, and borrowers would get their money from individuals and pay the bank and in many instances this very money was withdrawn from the bank whose loan was paid off."

The testimony of Mr. Hambrick, upon which the plaintiff relies and emphasizes in its Brief by setting out in black type, is as follows:

"Now the individual takes up a large per cent of the high rate paper, thus forcing banks to keep their surplus funds on deposit with their city correspondent." * * * "But I would like to add that the loans in the hands of individuals are not all long time loans running from three to five years, but a great many loans from six to twelve months are held by individuals." * * * "I have before me a list of parties whc loaned money the same as the banks. I have five parties whom I know made loans in the year 1921, in the aggregate amount of $87,000.00." * * * "The first one I have loaned money to three parties, a total of $33,000.00." * * *

Q. "The second one?"

A. "Loaned to five men a total of $24,800.00."

Q. "The third?"

A. "To two men, a total of $20,000.00, the fourth made one loan of four thousand dollars, the fifth one loan of six thousand dollars."

Q. "Were these loans that they made, paper they handled, the same kind of paper the bank handles?"

A. "Yes sir, the same kind of paper the bank handles?"

Q. "Were they such notes as the bank handles?"

A. "Yes sir, every one of them."

Q. "Does this list which you have presented in any wise represent the entire amount that has been loaned that you have knowledge of in that year or just examples?"

A. "Just examples, I am sure there is a good deal more. I should say four or five times that amount was loaned."

Q. "Were these men who loaned this money depositors in your bank?"

A. "Most of them."

Q. "As to the matter of fact whether they were loans or some other character of indebtedness?"

A. "They were loans, direct loans to the borrowers."

Q. "How do you know that?"

A. "The notes show they are, and checks were given to the borrowers in a number of cases on our bank."

W. G. Abbett (R. 76 to 78)

Mr. Abbett is the Cashier of the First National Bank of Georgetown. His answer to the following question gives the substance of all his testimony:

> Q. "From your knowledge of the extent to which individuals loan money in this county, either on secured or unsecured paper, and your knowledge of the extent to which they buy local securities, such as local street, municipal, county bonds, and other bonds, do (fol. 144) you consider that the individual investor in these forms of security comes into competition with your bank shares, and with the conduct of your banking business?
>
> A. "It certainly does." * * *

W. A. Hinton (R. 75)

The testimony of Mr. Hinton, who is the Cashier of one of the state banks in the County, is very brief and the substance of it is contained in the following question and answer:

> Q. "From your knowledge of bank conditions, and general money conditions in your neighborhood, do you consider that the individual investor in secured notes and unsecured notes, bonds, etc., comes into competition with your bank shares, and with the conduct of the business of your bank in the community?"
>
> "A. Yes sir."

C. B. Roberts (R. 79)

Mr. Roberts, after stating his position as Cashier of

the Citizens Bank of Stamping Ground, offers the following testimony:

"Q. From your knowledge of money conditions in your community, and of money loaned by individuals generally in your community, state whether or not individuals making loans on unsecured notes or on notes secured by mortgage, or local securities or other kinds, in your opinion come into competition with your bank shares, and with the conduct of the business of your bank?"

A. "Yes sir, very much so."

J. C. Nichols (R. 80 to 90)

Mr. Nichols is the Cashier of the Farmers Bank & Trust Company, a state bank, located in the County. After giving his idea of the nature of competition existing between individuals who make personal loans and banks, he gives five specific examples of loans made by customers of his bank to other customers of his bank aggregating $24,500.00.

L. L. Calvert (R. 94 to 103)

Mr. Calvert, the County Clerk of the County, was called as a witness by the plaintiff. It appears from his testimony that he was formerly a bank official in the County and at the time of giving his testimony he was a director of the First National Bank of Georgetown. On Cross-Examination, he gave the following testimony:

Q. "From your experience as a banker in this county, and from your knowledge drawn from your official duties in the County Clerk's Office, and in banking, I will ask you to state whether or not in

your opinion, the loans made by individual owners in this county as disclosed by this record comes into material competition with the bank, and state your reasons for your opinion?"

A. "No, sir—my reasons are in the first place that some of the loans made by individuals are loans which the bank refuses, and others are lien notes held direct by parties on land which they have sold, and for the further reason that my observation of banks in this county has been that the banks can loan practically their limit during any time or nearly so."

Q. "I will ask you whether or not it is true to your knowledge that the banks of the county are frequently seeking an opportunity to get rid of loans, paper that they hold in order to release their funds, and if they do not thruout practically every year transfer a certain amount of the paper they carry to individuals?"

A. "Yes sir, that is true I think, from my observations that that sometimes prevents them from having larger re-discounts."

Q. "I will ask you if it is not true to your knowledge that the banks in this county have been willing in some cases to go to the extent of taking a second mortgage for a part of a loan where they could get Federal Land Bank or other landing concerns to take a first mortgage off their hands for a part of the land?"

A. "Quite a number of them are recorded in my office."

Each of the Bank Cashiers are very liberal in expressing their opinions with reference to competition with their banks, brought about by individuals loaning money in the County, but the conclusions expressed by these witnesses, with reference to competition, when considered in the light of their testimony as to their understanding of the term "competition" clearly shows that the competition to which they have reference is only that which is brought about by all individuals, who, in making a loan take their deposits out of the bank and buy securities which the bank might have been willing to to purchase. That such "personal investments" do not come into substantial competition with national banks appears to be beyond dispute.

None of the witnesses in this case pretend to show that any individuals mentioned or within their knowledge are engaged in the investment business as a regular enterprise or that there is any continuity or regularity whatever maintained by any of the individuals mentioned in carrying on the business of making loans. Of course, when an individual makes a loan purely as a personal loan he makes the loan "in the same way as banks" as some of the witnesses say, but it does not follow from this that he is engaged in the investment business such as is carried on regularly and continuously by banks.

A most liberal view of the testimony in this case results in showing nothing more than that there exists in Kentucky numerous instances of personal loans made by individuals not engaged in banking or investment business. These individuals are customers of the banks and,

in many cases referred to, loans were made thru the banks and under the advice of bank officials. The evidence shows that the banks make a regular practice of turning over their loans to their customers who have money on deposit. The showing of a continuity or regularity of employment of moneyed capital in a particular way, by any single individual or group of individuals, is not even attempted, much less the existence of an established enterprise creating business rivalry amounting to "substantial competition" with national banks within the technical meaning of the term. With these meager facts before it, how could the Kentucky Court reach any other conclusion than that the plaintiff failed to prove its case? To hold otherwise would have made it necessary for the Court to assume many material facts in regard to which the record is utterly silent. The only presumption warranted by the failure of proof, as above indicated, is that all intangible property, in the hands of individual citizens other than bank shares, is of that class of moneyed capital which does not come in substantial competition with national banks. Were the facts otherwise the plaintiff would have certainly disclosed them by the proof.

The facts in this case are no stronger than the facts admitted upon the record in the cases of First National Bank vs. Ayers; First National Bank vs. County of Chehalis; National Bank of Commerce vs. Seattle, and First National Bank of Wellington vs. Chapman, above referred to, and the ruling of the Kentucky Court necessarily and rightfully followed the ruling of this Court in those cases.

Although in its Brief, the plaintiff-in-error has quoted

at length from the testimony contained in this record, no effort is made to point out even a single example of an investment by an individual or a group of individuals other than such as represent merely personal investments not employed or engaged in the banking or investment business or any similar employment and such investments have never been deemed moneyed capital within the meaning of the Statute.

By the act of March 4, 1923, Congress amended Section 5219 of the U. S. Revised Statutes so that the restriction, heretofore quoted, now reads as follows:

> "In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks; Provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

At the same time Congress added the following provision to the Statute:

> "The provisions of Section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks,

or the collecting thereof, to the extent that such tax would be valid under said section."

In commenting upon the Act as thus amended, the Kentucky Court of Appeals, assuming that by the amendment Congress intended to give the States power to collect taxes which would not have been valid under the old Act, said:

> "The provision plainly refers to taxes which would be valid under the Act but might not be valid under the original Act. The states needed no authority to collect taxes properly levied under the old Act. The section was intended to give the power to collect taxes levied under the old Act, if such levy was valid under the Amended Act. This is conclusively shown by the words 'legalizing, ratifying or confirming,' for there was no need to legalize, ratify or confirm previous levies if they were valid under the old statute. The State of Kentucky has ratified and confirmed the taxes heretofore levied and assessed by collecting them. This as we know from the current history of the state has been done for the years in question. Its proceeding by the sheriff to collect the taxes in question was an act ratifying and confirming the taxes theretofore levied and assessed and by the express words of the amendment, Section 5219, 'shall not prevent the collecting thereof to the extent that such tax would be valid under said section.' We, therefore, conclude that the state statute is valid and that the state has authority to collect the taxes under it."

The plaintiff-in-error assigns this ruling of the Kentucky Court as one of the grounds upon which it bases its claim for a reversal of this case, insisting that the Court erred in holding that the amendment of 1923 is applicable to this case without legislative action of the State.

It is plain that the only effect of this holding of the Kentucky Court is to make the rule for identifying "moneyed property" as laid down in the 1923 amendment, applicable to this case, notwithstanding the fact that this case arose several years before the passage of the amendment.

It is equally plain that, if the law as it existed, by implication, in the previous years involved in this case, was the same as expressed in the 1923 amendment, the ruling of the Kentucky Court is in no degree prejudicial to the plaintiff-in-error but properly applies the same rule to this case as would be applied to a case arising subsequent to the 1923 amendment. In referring to the law as it existed prior to the 1923 amendment, in the recent case of First National Bank vs. Anderson, supra, this Court says:

> "The re-enactment did no more than to put into express words that which, according to repeated decisions of this court, was implied before." * * * "Thus in legal contemplation and practical effect the restriction was the same before the re-enactment as after. What bearing a different legislative interpretation might have on a tax already levied, as here, need not be considered."

The law being the same before the amendment as

after it, the Kentucky Court clearly made no mistake in applying the following rule expressed in the amendment to this case, to wit:

> "that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital within the meaning of this section."

Under the decisions of the Court, above set out, we respectfully insist that the proof in this record is wholly insufficient to show any violation of the letter or spirit of Section 5219 U. S. Revised Statutes, either as it existed in the years 1919 to 1922 or as it now exists since the 1923 Amendment.

(4.) THE KENTUCKY COURT OF APPEALS WAS AUTHORIZED TO WEIGH THE EVIDENCE AND DETERMINE THE ISSUES OF FACT, AND THE FINDINGS OF FACT BY THE STATE COURT ARE CONCLUSIVE.

Under the laws of Kentucky, the Court of Appeals is the final Judge of facts in an equity case. While the findings of fact by the Chancellor in the lower court are given consideration, nevertheless the Court of Appeals will weigh and judge the sufficiency of the evidence for itself.

In the case of Taber vs. McGregor, 192 Ky. 600, the rule prevailing in Kentucky is stated, as follows:

> "It is a well-recognized rule that in an action in equity the chancellor's judgment is entitled to some weight, but the Court of Appeals will weigh and judge of the sufficiency of the evidence for itself, and where it is found to preponderate for one side or the other in such a way as to convince it that the chancellor erred, his judgment will be reversed. James vs. Golden, 172 Ky. 499, 189, S. W. 446; Farmer vs. Cornett, 174 Ky. 560, 192 S. W. 628; Farmer vs. Hampton, 154 Ky. 83, 156 S. W. 1041."

In the case of Elkhorn By-product Coal Co. vs. Tynes, 188 Ky., 269, the Court said:

> "His finding of fact is entitled to great consideration by this court, but it is not conclusive, and will not be so regarded, unless sustained by the weight of the evidence."

In the case of Roberts vs. Aker & Vogt, 203, Ky. 468, the Court said:

> "The appeal presents no question of law; it raises simply an issue of fact. In cases of this character, while this court will give some weight to the finding of the chancellor, nevertheless it will give judgment according to the truth of the matter as it appears from the record."

It thus appears that the Kentucky Court was acting within its well established authority in considering the evidence and determining the question of fact involved in this case.

This brings us to the consideration of the question whether the findings of fact made by the Kentucky Court

are conclusive upon this Court, in the consideration of the questions arising upon this writ of error.

In the case of Dower vs. Richards, 151 U. S. 658, the Court reviewed many cases on the subject and stated the general rule, as follows:

> "The principal ground on which the plaintiffs in error seek to reverse the judgment of the supreme court of California is that its decision, in matter of fact, was erroneous, and contrary to the weight of the evidence in the case; but to review the decision of the state court upon the question of fact is not within the jurisdiction of this court."

In the same case the Court quoted from an earlier case the words of Chief Justice Waite, saying:

> "There could have been no decision of the Court of Appeals against the validity of any statute of the United States, because it was found that the facts upon which the defendants below relied to bring their case within the statute in question did not exist. The judgment did not deny the validity of the statute, but the existence of the facts necessary to bring the case within its operation." (23 Lawy. Ed. U. S. Rep. 510, 511)

It will likewise be noted in this case that the Kentucky Court of Appeals did not deny the validity of the restriction set out in Section 5219 U. S. Revised Statutes but merely held that the facts necessary to bring this case within its operation are not shown to exist.

In the case of Egan vs. Hart, 165 U. S. 188, the Court dealing with the same question said:

"The record before us contains all the testimony introduced and evidence offered in the trial court, all of which was open for consideration and passed upon by the supreme court of the state of Louisiana. On error however, to a state court, this court cannot re-examine the evidence, and, when the facts are found below, is concluded by such finding. Dower vs. Richards, 151 U. S. 658, 14 Sup. Ct. 452; Bartlett vs. Lockwood, 160 U. S. 386, 16 Sup. Ct. 334; Stanley vs. Schwalby, 162 U. S. 255, 16 Sup. Ct. 754. True it is that in Dower vs. Richards the court (referring to the dictum in Republican River Bridge Co. vs. Kansas Pac. Ry., 92 U. S. 315, 317) treated as open for further consideration the question whether, in chancery cases, the power existed in this court to review the decision of state courts on both the law and the fact. We, however, conclude that not only the very nature of a writ of error, but also the rulings of this court from the beginning, make it clear that on error to a state court in a chancery case, as in a case at law, when the facts are found by the court below, this court is concluded by such findings."

The case of Merchants Mutual Automobile Liability Insurance Co. vs. Smart, 267 U. S. 126, was brought to this Court under the claim that a law of the State of New York was in conflict with the bankruptcy laws of the United States.

One of the objections offered to the judgment of the state court was that the state court erred in holding the evidence to be sufficient to show that the insured was

insolvent. With reference to this question of fact, Mr. Chief Justice Taft said:

> "A third objection is made that there was not sufficient evidence that the insured was insolvent. This was a question of fact under the proceedings which were instituted by execution and what followed. The state courts have found it to exist and it is not for us to question their findings."

The case of Traux vs. Corrigan 257 U. S. 312, which is relied upon by the plaintiff as authority to the contrary does not appear to us to depart from the general rule so clearly established by the above cases. The gist of that opinion seems to be that where "facts alleged are admitted by demurrer this Court is at full liberty to consider them in determining their legal effect as a deprivation of plaintiffs legal rights under a Federal law." It is apparent that the determination of the effect of admitted facts under a Federal law is entirely a different proposition from the determination of the question of the existence of the facts themselves where they are not admitted.

However, another line of cases from this Court has clearly established an exception to the general rule, above stated. It is, that this Court will review the findings of the State Court as to the facts, when the conclusions of law and findings of fact are so intermingled as to make it necessary in order to pass upon the question, to analyze the facts.

That this case does not come within the exception, above stated, but is subject to the general rule, is clearly

shown by the decision of this Court in a case involving the same questions of law and issues of fact as are involved here. The case referred to is that of Jenkins vs. Neff, 186 U. S. 230, in which a New York Statute was attacked as being in violation of Section 5219 U. S. Revised Statutes. It was claimed that under the state law, state trust companies bearing a lower rate of taxation than national banks were, in fact, engaged in a business in substantial competition with national banks and therefore the favors granted them under the state law amounted to illegal discrimination. The State Court of New York, after considering the facts, held that the trust companies of the state were not engaged in such employment of their capital as to come in substantial competition with national banks. The case was brought to this Court upon a writ of error to the State Court and in the opinion affirming the judgment of the Supreme Court of the State of New York, this Court said:

> "although there is in the record quite an amount of testimony as to the assets and business of trust companies in Brooklyn, yet the case was determined by the supreme and appellate courts of New York upon findings of fact,—which findings do not sustain the contention of plaintiffs in error in this respect,—and it is well settled that the findings of fact in the state courts are on a writ of error conclusive with us. Hedrick vs. Atchison, T. & S. F. F. Co. 167 U. S. 673, 677, 42 L. Ed. 320, 321, 17 Sup. Ct. Rep. 922, and cases cited therein; E. Bement & Sons vs. National Harrow Co. 184 U. S.—, ante, 747, 22 Sup.

Ct. Rep. 747. In other words, we apply the law to the facts settled in state courts, and we do not search the record to see if there be not disclosed by the testimony some other matters not embraced in the findings which may affect the conclusion."

The questions of law and issues of fact are no more intermingled in this case than they were in the cases of Jenkins vs. Neff, supra, and we can see no reason for not applying the same rule in this case.

Couclusion

The foregoing authorities lead to the following conclusions:

The restriction upon the authority of the states in the taxation of national banks contained in the Federal Statutes, referred to, was designed solely as a protection to national banks from actual discrimination in favor of that particular class of moneyed capital which comes in substantial competition with them.

Such actual discrimination, against which the national banks are thus afforded protection, cannot exist where the particular class of moneyed capital, referred to, does not exist. Therefore, the primary and essential inquiry is whether the particular class of moneyed capital, referred to, exists and this is purely and simply a question of fact.

Since moneyed capital, generally speaking, is not included within the term as used in the Statute, it is clear

that the mere showing of the existence of a large amount of undefined and unidentified moneyed capital in the hands of individual citizens, bearing a lower tax rate, is not sufficient to show discrimination in violation of the Statute. Moneyed capital of the particular class which comes in competition with national banks, within the meaning of the Statute, can only be identified by the purpose and nature of its employment by the individual citizen. In the absence of facts showing that the purpose and nature of its employment brings it within the particular class, referred to, there is no showing of discrimination and therefore no ground exists for invoking the protection afforded by the Federal Statute.

To permit national banks, under the cover of the Federal Statute, to escape taxation, where there is no showing of actual discrimination against them, would, in many cases, as in this case, lead to a condition of discrimination under the tax laws of the State in favor of national banks and against other banking interests, which, in its effect, would be equally as unfair and unjust as the conditions which the law was designed to prevent.

The cases above referred to show that the Courts have prevented the possibility of just such conditions as might thus arise by consistently refusing to interfere with the operation of state tax laws upon the complaint of national banks unless it be clearly shown that in the application of the laws discrimination against national banks, within the meaning of the Federal Act, in fact, exists.

Whether, in the consideration of this case, the finding of fact made by the Kentucky Court of Appeals be ac-

cepted as conclusive, as we insist it should be under the well established rule, or whether this Honorable Court examines the evidence in the record and judges the facts for itself, we think the same conclusion must be reached, namely, that the plaintiff-in-error has failed to show the existence in Kentucky of a relatively material amount of "moneyed capital" employed in substantial competition with national banks and therefore it's complaint of discrimination, within the meaning of the Federal Statute, is not supported by the record.

For the reasons stated, we respectfully ask that the judgment of the Kentucky Court of Appeals, in so far as it refuses to grant the injunction sought by the plaintiff-in-error, be affirmed.

H. CHURCH FORD,
Attorney for Defendants-in-Error.

JAMES B. FINNELL,
W. S. KELLY,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 78.—October Term, 1926.

The Georgetown National Bank, Plaintiff in Error, *vs.* Ollie McFarland, Sheriff of Scott County, Kentucky; The Fiscal Court of Scott County, Kentucky, etc., et al. } In Error to the Court of Appeals of the State of Kentucky.

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[March 21, 1927.]

Mr. Justice Stone delivered the opinion of the Court.

The plaintiff in error, a national banking association located in Scott County, Kentucky, brought suit in the circuit court of that county to enjoin defendants in error, tax officials of the county, from assessing or collecting taxes on the shares of stock of plaintiff in error on the ground that the assessment and tax were at a higher rate than that assessed on moneyed capital employed in competition with the business of national banks, and hence prohibited by § 5219 of the Revised Statutes of the United States. Judgment for the plaintiff was reversed by the Court of Appeals of Kentucky. The case comes here on writ of error and disposition of it may be made upon the principles applied in *First National Bank of Hartford* v. *City of Hartford*, decided this day.

By § 4019*a*, sub-section 10 (Carroll Ky. Stat. 1922), money in hand, notes, bonds and other credits, whether secured by mortgage, pledge or otherwise, or unsecured, are subject to taxation for state purposes only at the rate of forty cents per one hundred dollars. By § 4092 of the same act, shares in national banks, state banks and trust companies are placed in a separate class and made subject both to the state tax at the forty-cent rate and to local taxes as well. The statute thus discriminates in favor of moneyed capital in the form of credits which are subject only to the state tax.

Plaintiff in error, seeking to establish that the favored capital was in competition with national banks, relied principally upon

the proof that there were substantial amounts of capital invested in the state by individuals in bonds, notes, accounts and mortgages, aggregating approximately $1,500,000, which it is contended represents moneyed capital in competition with national banks. But plaintiff made no attempt to show that there were other businesses or courses of investment in the state employing moneyed capital in competition with its business or that of other national banks. The evidence with respect to capital invested by individuals, taken as a whole, falls short of establishing that the capital thus used is employed substantially as in the loan and investment features of banking in making investments by way of loan or discount or in notes, bonds and other securities, with a view to sale or repayment and reinvestment.

The Court of Appeals of Kentucky, following the state practice, reviewed the evidence, concluding from it that "no material part of the capital held by the individuals is so invested as to come in competition with the national banks."

The evidence is set forth in the record. In some particulars it is conflicting and the conflicts are such that their resolution by the Court of Appeals should be accepted by us. It cannot be said either that the finding is without evidence to support it or that it certainly is against the weight of the evidence. In the course of the opinion the Court of Appeals gave more attention than we think justified to the difference between short-time and long-time loans and to the readiness with which the banks obtain loans, notwithstanding the competition alleged, but even after making due allowance for this we think the finding should not be disturbed. It does not depart from but gives effect to the principles announced in the decision just made in *First National Bank of Hartford* v. *City of Hartford.*

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.